

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- SECOND SESSION



REPORT OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS
AND HOUSING

ON

CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL,
2018

(NATIONAL ASSEMBLY BILLS NO. 12 OF 2018)

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2018

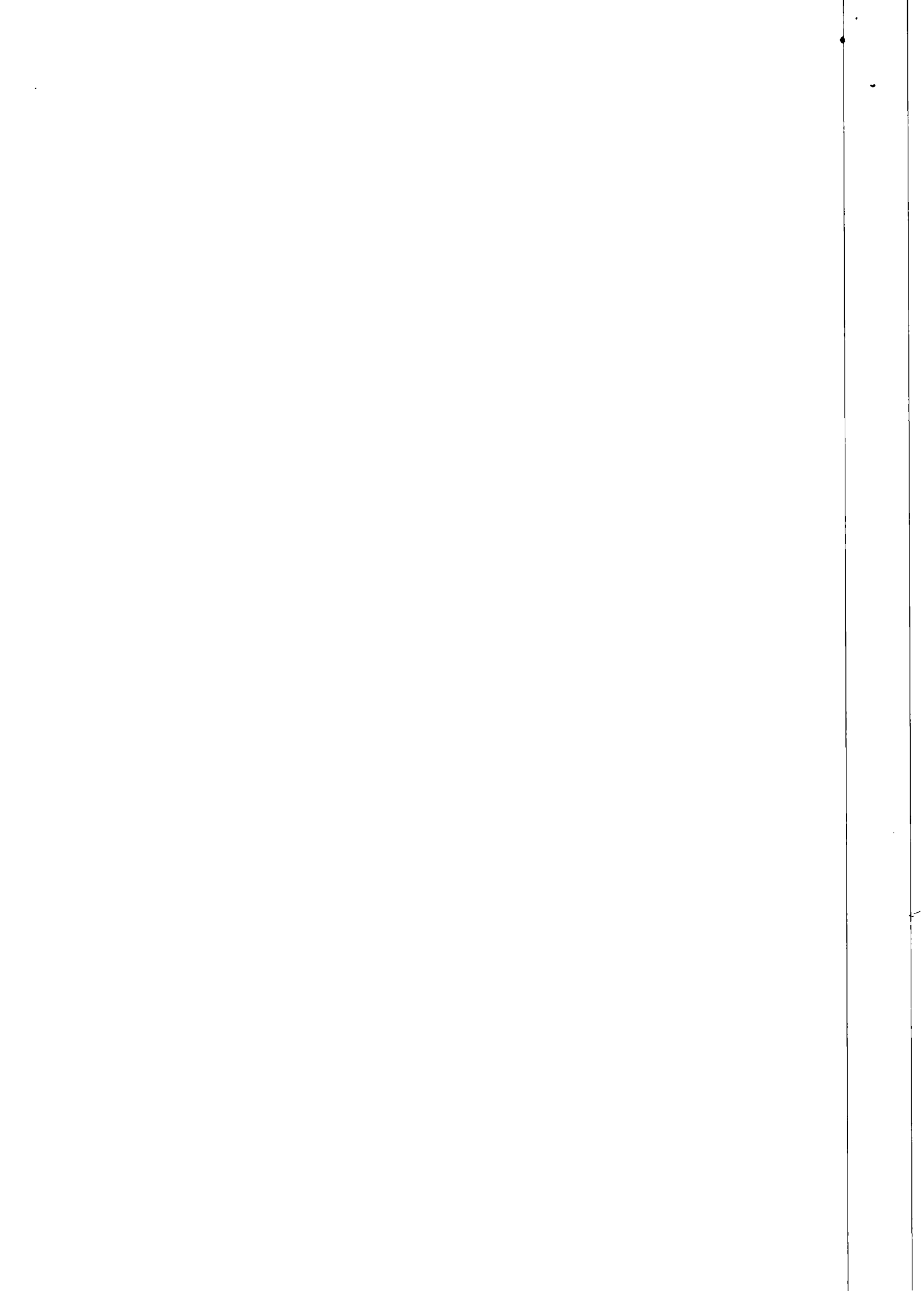


Table of Contents

A. PREFACE	3
Chairperson's Foreword	3
B. Mandate and Membership of the Committee	4
a) Mandate	4
b) Membership	5
C. Consideration of the Statute law (Miscellaneous Amendments) Bill, 2018.....	6
D. Adoption of the Report	6
E. Acknowledgments	8
1. Background.....	9
I. Committal of the Statute law (Miscellaneous Amendments) Bill, 2018.....	9
II. Objective of the statute law	9
III. Public Participation	9
2. Committee Scrutiny of the proposed amendment to the Statute	11
3. General Observations	34
4. Committee Recommendations	35

Annexures

- Annex 1: Copy of The Statute law (Miscellaneous Amendments) Bill, 2018
- Annex 2: Advert for submission of memoranda
- Annex 3: Copies of Memoranda Submitted by stakeholders to the Committee
- Annex 4: Committee Minutes

A. PREFACE

Chairperson's Foreword

The Statute law (Miscellaneous Amendments) Bill, 2018 was published on the 10th April, 2018 by the Hon. Aden Duale, MP and consequently the Bill underwent the First Reading on 18th April, 2018 in the National Assembly. The Bill was thereafter committed to the Departmental Committee on Transport Public Works and Housing as provided for in the National Assembly Standing Order 127(1)

The Statute law (Miscellaneous Amendments) Bill, 2018 seeks to make amendments to various statutes. The Committee on Transport, Public Works and Housing was tasked with scrutinizing amendment the Bill.

The Committee while considering the Bill pursuant to Article 118(b) and Standing Order 127(3), invited the public to submit representation/comments they might have on the Bill. This invitation was done through, a notification which was placed in the mainstream print media on 26th April, 2018.

While considering the Bill, the Committee received oral submissions and written memoranda from stakeholders.

- a) **Mr. Kenneth Samoei** who had proposed amendments to the Engineers Act,2011 to among other things provide that the members of the Engineers Board of Kenya appointed by the Cabinet Secretary be “elected” as opposed to being “appointed” by the Cabinet Secretary; and
- b) **Mr. Stephen Kiama** as regards the proposed amendments to the Traffic Act, Cap 403 on the definition of “driving test examiners” which had been proposed to be replaced yet the definition had not been proposed to be deleted and the proposed amendments to the National Transport and Safety Authority Act with regards to the removal of the corporate powers of the Authority, No.33 of 2012.
- c) The Managing Director of the **Kenya Airports Authority** on behalf of the institution was agreeable to the proposed amendments to the Kenya Airports Authority Act (Cap.395).
- d) The Acting Executive Director of the **National Construction Authority** on behalf of the institution was agreeable to the proposed amendments to the National Construction Authority Act, No. 41 of 2011.
- e) The Registrar of the **Engineers Board of Kenya** on behalf of the institution was agreeable to the proposed amendments to the Engineers Act 2011 No. 43 of 2011.
- f) The **National Housing Corporation** was agreeable to the proposed amendments to the Housing Act, Cap 117.
- g) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were agreeable to all the proposed amendments to the

Traffic Act, Cap. 403, the same having emanated from themselves. They were also in agreement with the members that the proposed amendments to section 8 of the Traffic Act, Cap. 403 which seeks to create the offence and prescribe the penalty on issuance of insurance cover to a person who is not the registered owner of a motor vehicle, ought to be relooked.

- h) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were opposed to all the proposed amendments to the National Transport and Safety Authority Act, No. 33 of 2012 on grounds that-
- (i) The proposed amendments did not originate from them;
 - (ii) They were never consulted or informed of the proposed amendments;
 - (iii) The proposed amendments are substantive in nature and that the Statute Miscellaneous Acts are limited to minor corrections and amendments;
 - (iv) The proposed amendments have far reaching consequences and if adopted would reverse the tremendous gains achieved by NTSA;
 - (v) The proposed amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of the National Transport and Safety Authority; and
 - (vi) The proposed amendments create glaring vacuums and lacunas as they lack transition clauses, should the amendments be adopted.

B. Mandate and Membership of the Committee

a) Mandate

The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;

- a. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. study and review all legislation referred to it;
- d. study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e. investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;

- f. to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
- g. examine treaties, agreements and conventions;
- h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- j. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- k. examine any questions raised by Members on a matter within its mandate.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public works;
- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

In executing this mandate, the Committee oversees various State Departments, namely:

- i. The State Department of Transport;
- ii. The State Department of Infrastructure;
- iii. The State Department of Housing and Urban Development;
- iv. The State Department of Public Works; and
- v. The State Department of Shipping and Maritime Affairs.

b) Membership

1. Hon. David Pkosing, M.P.
2. Hon. Moses Kuria, M.P.
3. Hon. Johnson Manya Naicca, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Savula Ayub Angatia, M.P.
7. Hon. Samuel Arama, M.P.

Chairperson
Vice Chairperson

8. Hon. Suleiman Dori Ramadhani, M.P.
9. Hon. Rigathi Gachagua, M.P.
10. Hon. Ahmed Bashane Gaal, M.P.
11. Hon. Ahmed Abdisalan Ibrahim, M.P.
12. Hon. Dominic Kipkoech Koskei, M.P.
13. Hon. Gideon Mutemi Mulyungi, M.P.
14. Hon. Kulow Maalim Hassan, M.P.
15. Hon. Mugambi Murwithania Rindikiri, M.P.
16. Hon. Rehema Dida Jaldesa, M.P.
17. Hon. Shadrack John Mose, M.P.
18. Hon. Tom Mboya Odege, M.P.
19. Hon. Vincent Kemosi Mogaka, M.P.

C. Consideration of the Statute law (Miscellaneous Amendments) Bill, 2018

Hon. Chair,

The Statute law (Miscellaneous Amendments) Bill, 2018 underwent the First reading on 18th April, 2018 and thereafter committed to the Departmental Committee on Transport Public Works and Housing as provided for in the Standing order 127(1) for deliberation.

Pursuant to Article 118(b) and Standing Order 127(3), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 26th April, 2018 informing the public that the Committee was considering the Statute law (Miscellaneous Amendments) Bill, 2018 and invited them to submit any representation they might have on the Bill.

Hon. Chair,

The Committee held meetings to consider pertinent issues that the Bill was seeking to address. It is worth noting that the Committee received two (2) written memoranda regarding the Bill.

D. Adoption of the Report

We the members of the Departmental Committee on Transport, Public Works and Housing have pursuant to Standing Order 199 adopted this Report on the consideration of the Statute law (Miscellaneous Amendments) (No.2) Bill, 2018 and the Statute law (Miscellaneous Amendments) Bill,

2018. We affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Tuesday 19th June, 2018:-

1. Hon. David Pkosing, M.P

Chairperson

2. Hon. Moses Kuria, M.P.

Vice Chairperson

3. Hon. Samuel Arama, M.P.

4. Hon. David Njuguna Kiaraho, M.P.

5. Hon. Johnson Many Naicca, M.P.

6. Hon. Rigathi Gachagua, M.P

7. Hon. Peris Pesi Tobiko, M.P.

8. Hon. Suleiman Dori Ramadhani, M.P.

9. Hon. Savula Ayub Angatia, M.P.

10. Hon. Ahmed Abdisalan Ibrahim, M.P.

11. Hon. Ahmed Bashane Gaal, M.P.

12. Hon. Dominic Kipkoech Koskei, M.P.

13. Hon. Gideon Mutemi Mulyungi, M.P.

14. Hon. Kulow Maalim Hassan, M.P.

15. Hon. Mugambi M. Rindikiri, M.P.

16. Hon. Rehema Dida Jaldesa, M.P.

17. Hon. Shadrack John Mose, M.P.

18. Hon. Tom Mboya Odege, M.P.

19. Hon. Vincent Kemosi Mogaka, M.P.

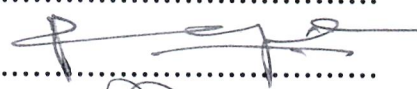

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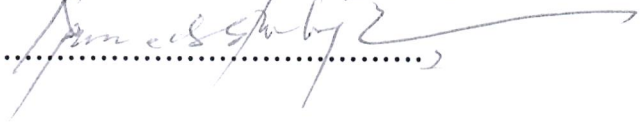

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E. Acknowledgments

Hon. Chair,

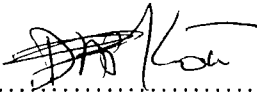
The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report within the given timelines.

I am grateful for the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the Secretariat for their technical support during the compilation of the report.

On behalf of the Committee, and pursuant to Standing Order No. 127 (4) of the National Assembly, It is my honor and privilege to present the to the House for consideration and adoption the Committee Report on the consideration of the Statute law (Miscellaneous Amendments) Bill, 2018 that seeks to make amendments to the;

- i. Housing Act, (Cap 117)
- ii. Kenya Ports Authority Act (Cap.391);
- iii. Kenya Airports Authority Act (Cap.395);
- iv. Traffic Act (Cap. 403);
- v. Kenya Roads Board Act, 1999 (No.7 of 1999);
- vi. National Construction Authority Act, 2011 (No. 41 of 2011);
- vii. Engineers Act 2011 (No. 43 of 2011); and
- viii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012).

Thank you

SIGNED

HON. DAVID PKOSING, CBS, M.P
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

1. Background

I. Committal of the Statute law (Miscellaneous Amendments) Bill, 2018

The Statute law (Miscellaneous Amendments) Bill, 2018 underwent first reading on 18th April, 2018 and thereafter committed to the Departmental Committee on Transport Public Works and Housing as provided for in the Standing order 127(1).

Pursuant to Article 118(b) and Standing Order 127(3), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 26th April, 2018 informing the public that the Committee was considering the Statute law (Miscellaneous Amendments) Bill, 2018 which sought to amend the Housing Act, (Cap 117); the Kenya Ports Authority Act (Cap.391); the Kenya Airports Authority Act (Cap.395); the Traffic Act (Cap. 403); the Kenya Roads Board Act, 1999 (No.7 of 1999); the National Construction Authority Act, 2011 (No. 41 of 2011); the Engineers Act 2011 (No. 43 of 2011) and the National Transport and Safety Authority Act, 2012 (No. 33 of 2012).

II. Objective of the statute law

The Statute law (Miscellaneous Amendments) Bill, seeks to make various, wide ranging amendments to various statutes. The Departmental Committee on Transport Public Works and Housing was tasked with scrutinizing amendments to eight statutes.

III. Public Participation

Article 118(1) (b) of the Constitution provides that “Parliament shall facilitate public participation and involvement in the legislation and other business of the Parliament and its Committees.” Standing Order 127(3) of the National Assembly Standing Orders provides that “the Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the House.”

Arising from the foregoing the Committees, placed a notification in the two mainstream print media on 26th April.2018 informing the public that the Committee was considering the Statute law (Miscellaneous Amendments) Bill, 2018, that seeks to make wide-amendments to various statutes. The Committee was tasked with scrutinizing amendments to the following statutes;

- (a) The Housing Act, (Cap 117);

- (b) The Kenya Ports Authority Act (Cap.391);
- (c) The Kenya Airports Authority Act (Cap.395).
- (d) The Traffic Act (Cap. 403)
- (e) The Kenya Roads Board Act, 1999 (No.7 of 1999).
- (f) The National Construction Authority Act, 2011 (No. 41 of 2011).
- (g) The Engineers Act 2011 (No. 43 of 2011).
- (h) The National Transport and Safety Authority Act, 2012 (No. 33 of 2012).

The Committee received oral submissions and written memoranda from stakeholders;

- a) **Mr.Kenneth Samoei** who had proposed amendments to the Engineers Act,2011 to among other things provide that the members of the Engineers Board of Kenya appointed by the Cabinet Secretary be “elected” as opposed to being “appointed” by the Cabinet Secretary; and
- b) **Mr.Stephen Kiama** as regards the proposed amendments to the Traffic Act, Cap 403 on the definition of “driving test examiners” which had been proposed to be replaced yet the definition had not been proposed to be deleted and the proposed amendments to the National Transport and Safety Authority Act with regards to the removal of the corporate powers of the Authority, No.33 of 2012.
- c) The Managing Director of the **Kenya Airports Authority** on behalf of the institution was agreeable to the proposed amendments to the Kenya Airports Authority Act (Cap.395).
- d) The Acting Executive Director of the **National Construction Authority** on behalf of the institution was agreeable to the proposed amendments to the National Construction Authority Act, No. 41 of 2011.
- e) The Registrar of the **Engineers Board of Kenya** on behalf of the institution was agreeable to the proposed amendments to the Engineers Act 2011 No. 43 of 2011.
- f) The **National Housing Corporation** was agreeable to the proposed amendments to the Housing Act, Cap 117.
- g) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were agreeable to all the proposed amendments to the Traffic Act, Cap. 403, the same having emanated from themselves. They were also in agreement with the members that the proposed amendments to section 8 of the Traffic Act, Cap. 403 which seeks to create the offence and prescribe the penalty on issuance of insurance cover to a person who is not the registered owner of a motor vehicle, ought to be relooked.
- h) The **National Transport and Safety Authority (NTSA)** and the **Ministry of Transport, Infrastructure and Urban Development** were opposed to all the proposed amendments to the National Transport and Safety Authority Act, No. 33 of 2012 on grounds that-
 - (i) The proposed amendments did not originate from them;
 - (ii) They were never consulted or informed of the proposed amendments;
 - (iii)The proposed amendments are substantive in nature and that the Statute;

- (iv) Miscellaneous Acts are limited to minor corrections and amendments;
- (v) The proposed amendments have far reaching consequences and if adopted would reverse the tremendous gains achieved by NTSA;
- (vi) The proposed amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of the National Transport and Safety Authority; and
- (vii) The proposed amendments create glaring vacuums and lacunas as they lack transition clauses, should the amendments be adopted.

The Committee held several meetings to deliberate on pertinent issues that the Bill was seeking to address.

2. Committee Scrutiny of the proposed amendment to the Statute

The following is a brief scrutiny of the proposed amendment to the statute

Statute	Section	Proposed Amendment	Memoranda from the public	Comments	COMMITTEE OBSERVATIONS
The Housing Act, (Cap 117).	s.3(2)	Delete and substitute therefor the following new subsection— “(2) The Corporation shall consist of— (a) a chairperson appointed by the President; (b) the Principal Secretary responsible for housing in the Ministry; (c) a person appointed by the Cabinet Secretary for the time being responsible for finance; and (d) not less than five nor more than seven persons appointed by the Cabinet Secretary for the time being responsible	The National Housing Corporation (NHC) supported the amendments as proposed in the Bill.	The proposed amendment seeks to introduce the following changes: (a) the Chairperson will be appointed by the President as opposed to the Cabinet Secretary; (b) the Cabinet Secretary can appoint five to seven members as opposed to the six to eight he/she can currently appoint.	(a) the Cabinet Secretary should be limited to appointing a maximum of six members only under paragraph (d); (b) in appointing members under paragraph (d), the Cabinet Secretary should have regard to minority group.

		for housing, being persons who in his or her opinion possess knowledge of housing development or housing finance.”			
The Kenya Ports Authority (Cap.391).	s.62(1)	Delete the expression “Chief Justice” and substitute therefor the words “Registrar of the Nairobi Centre for International Arbitration established under the Nairobi Centre for International Arbitration Act, 2013”.		The proposed amendment seeks to provide that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration instead of the Chief Justice.	This is in order as it encourages independence of the courts and arbitration. The Committee accepted the amendment.
The Kenya Ports Authority Act (Cap.395).	s.33(1)	Delete the expression “Chief Justice” and substitute therefor the words “Registrar of the Nairobi Centre for International Arbitration established under the Nairobi	The Managing Director of the Kenya Airports Authority supported the amendments as proposed in the Bill.	The proposed amendment seeks to provide that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration instead of the Chief Justice.	This is in order as it encourages independence of the courts and arbitration. The Committee accepted the amendment as proposed.

		Centre for International Arbitration Act, 2013”.				
The Traffic Act (Cap. 403)	s.2	<p>Insert the following new definition in proper alphabetical sequence –</p> <p>“authorised officer” means a person appointed as such under section 3(4).</p>	<p>The National Transport and Safety Authority (NTSA) and the Ministry of Transport, Infrastructure and Urban Development were agreeable to all the proposed amendments.</p> <p>Mr. Stephen Kiama Section 2 of the Act provides that “driving test examiner” means any person appointed to be a driving test examiner under subsection (3) of section 3; Currently, there is no section 3 (3).The</p>	The proposed amendment introduces a new definition in the Act.	<p>Delete the term “driving test examiner” from the interpretation section (section 2) of the Act.</p> <p>The Committee proposed introduction of section 3(3) and “authorised officer”</p>	

			<p>introduction of a new section 3 (3) will not correspond to the current definition.</p> <p>NB. The “term driving test examiner” is found in section 39 (1). The Bill proposes to delete this term. If adopted, it would be necessary to delete this term from the interpretation section.</p>		
	s.3	<p>Insert the following new subsections immediately after subsection (2)-</p> <p>(3) The Authority may appoint such number of suitably qualified persons to be inspectors of motor vehicles as it may deem necessary for purposes of this</p>	<p>3(4) – (i) The Bill refers to offices instead of officers (typographical error).</p> <p>(ii) This section does not need to be inserted as the Traffic Act, Cap. 403 is enforced by police officers and the role of an authorised</p>	<p>The proposed amendment seeks to define and provide for the appointment of inspectors of motor vehicles and designation of authorised officers by the NTSA for purposes of the Act.</p>	<p>This amendment is to align the Traffic Act, Cap. 403 with section 4 of the National Transport and Safety Authority Act, 2012 which provides that the Authority shall conduct motor vehicle inspection and certification.</p> <p>The Committee accepted the amendment as proposed.</p>

		<p>Act.</p> <p>(4) The Authority may designate any of its offices to be authorised officers for purposes of this Act.</p>	<p>officer of the Authority should fall under the National Transport and Safety Authority Act, 2012.</p> <p>NB. There are various amendments being proposed to the Traffic Act, Cap. 403 and the National Transport and Safety Authority Act, 2012 to link the two statutes.</p>		
	s.8	<p>Renumber the existing provision as subsection (1) and insert the following new subsection after the renumbered subsection (1)-</p> <p>“(2) Any person who issues a motor vehicle insurance cover to a person other than the</p>		<p>The proposed amendment seeks to create the offence and prescribe the penalty on issuance of insurance cover to a person who is not the registered owner of a motor vehicle.</p>	<p>(a) There is need to distinguish between the beneficial owner and the registered owner;</p> <p>(b) There is need to distinguish the issue of ownership and insurance of motor vehicles;</p> <p>(c) This amendment will discourage the sale of cars by hire purchase and part payments.</p>

		registered owner of the vehicle commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years for a first offence, and to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding two years for each subsequent offence.”			The Committee rejected the amendment as proposed.
	s.39(1)	Delete the words “driving test examiners” and substitute therefor the words “the Authority”.	The proposed amendments will contradict the NTSA Act, 2012 as the Authority is only given oversight responsibility but not the responsibility to conduct driving test. NB. This is a	The proposed amendment seeks to provide for driving tests which are conducted by the National Transport and Safety Authority as opposed to driving test examiners.	This is in line with the Committee’s proposal that the Authority should limit itself to policy issues only. The Committee accepted the amendment as proposed.

			policy and administrative issue which the Ministry should shed light on.		
	s.45(1)	Insert the words “or a commercial vehicle” immediately after the words “public service vehicle”.		The proposed amendment seeks to create an offence and provide for the penalty for driving of a commercial vehicle, under any intoxicating liquor.	This proposal is welcome as it penalises the driving of commercial vehicles while being intoxicated. The Committee accepted the amendment as proposed.
	s.56(1)	Insert at the end thereof the words “or as provided for under the East African Community Vehicle Load Control Act, 2013.		The proposed amendment seeks to recognize loads as specified by the manufacturer of the chassis of a vehicle or provided for under Traffic Act and also the East African Community Vehicle Load Control Act, 2013.	This proposal is welcome as it standardises the loads that can be carried within East Africa. The Committee accepted the amendment as proposed.
	s.57	Insert the following new subsection immediately a subsection (2)- “(3) An authorised officer	(a) The proposed subsection (3) is not advisable as it is the role of the police to	The proposed amendment seeks to create an offence and prescribe penalty for driving a vehicle which requires a permit prescribed under the Act or the East African	(b) The term “authorised officer” has been introduced in section 2 and it refers to NTSA officials; (c) The Committee is of the view that NTSA

		<p>may detain a vehicle carrying any of the loads requiring a permit as prescribed under this Act or the East African Community Load Control Act, 2013, and which is found to be without a permit, or direct such vehicle to proceed to such place as may be necessary, taking into account safety, health or security, and the transporter owning such vehicle shall be liable to such fine or imprisonment as may be prescribed.”</p>	<p>enforce the Traffic Act, Cap. 403 and the NTSA will be usurping the role of the police.</p> <p>(b) The issue of a lack of permit is not a safety issue.</p> <p>(c) The provision that the vehicle will be directed to a place as may be necessary is not permissible as vehicles should always be detained at a police station unless a court of law prescribes otherwise.</p> <p>The President stated in January</p>	<p>Community Load Control Act, 2013 without such a permit.</p> <p>(a)</p>	<p>officials should not be allowed to patrol the roads;</p> <p>(d) The section refers to officers of a “highway authority” and there will be need to distinguish these officers from those of NTSA.</p> <p>The Proposed amendment was rejected by the Committee</p>
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			<p>2018 that traffic management along the roads should be the work of the police.</p> <p>NB. There are various amendments being proposed to the Traffic Act, Cap. 403 and the National Transport and Safety Authority Act, 2012 to link the two statutes.</p>		
	s.58	<p>Delete the expression “section 55 or section 56” and substitute therefor the expression “section 55, 56 or 57”;</p> <p>Insert at the end thereof the words “or in accordance with the East African Community Vehicle Load</p>		<p>The proposed amendment seeks to include contravention of section 57 and the East African Community Vehicle Load Control Act, 2013 as provisions which the penalties under section 58 will apply.</p>	<p>The Bill should be amended so that it reflects that the words “or in accordance with the East African Community Vehicle Load Control Act, 2013” should be inserted before the words “shall be guilty”.</p>

		Control Act, 2013.			
	s.70(5B)	Delete.		The proposed amendment seeks to remove the penalty provided with respect to violation of traffic signs prescribing speed limits on the road by more than twenty kilometers per hour. Penalty for the same is already provided in sub-section (5A).	Section 70 (5A) and (5B) prescribe different penalties for the same offence. No justifiable reasons for the removal of the penalty. The Proposed amendment was rejected by the Committee
	s.85	Delete and substitute therefor the following ne section- 85. Driving under the influence of drink. Subject to section 45, any person who, when driving or attempting to drive or when in charge of a vehicle other than a motor vehicle, on a road or other public place, is under the influence of drink or a drug beyond		The proposed amendment seeks to give power to the Cabinet Secretary to prescribe the limits of drinks or drugs a driver of a motor vehicle can consume.	There is need to: (a) define drink or drug more precisely; (b) Define who the relevant Cabinet Secretary is; and why it should be left to the Cabinet Secretary to define the limits. The Proposed amendment was rejected by the Committee

		<p>the limits prescribed by the Cabinet Secretary, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for term not exceeding two years, or to both.</p>			
	s.91(1)	<p>Insert the following new paragraph immediately after paragraph (h) -</p> <p>(i) Causes any damage to the road.</p> <p>Insert the following new subsection immediately after subsection (2) -</p> <p>(3) Any person who contravenes the provisions of this section commits an offence and is</p>		<p>The proposed amendment seeks to create the offence and prescribe the penalties for any damage to roads.</p>	<p>This proposal is in order as it ensures that any damage to the road is punishable.</p> <p>The Proposed amendment was adopted by the Committee</p>

		liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.			
	s.94	Delete and substitute therefor the following new section- 94. Any person who contravenes or fails to comply with any of the provisions of this Part commits an offence and is liable on conviction, where no other penalty is specifically provided, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.		The proposed amendment seeks to enhance the penalty provided with respect to contravention of the provisions of the Part from Kshs. 5, 000 to Kshs. 20, 000 or imprisonment for a term not exceeding one year.	This amendment is in order as it caters for instances whereby the offender cannot raise the necessary fine. The Proposed amendment was adopted by the Committee
	s.104	Delete and substitute therefor the following new		The proposed amendment seeks to correct a drafting error	This amendment is in order as it corrects a drafting error.

		<p>section -</p> <p>104. Any person who contravenes or fails to comply with any provisions of this Part commits an offence and is liable on conviction, where no penalty is specifically provided, to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months.</p>		<p>as it was not clear whether the maximum penalty was Kshs. 10, 000 or Kshs. 20, 000 and also introduce the provision of imprisonment for a term not exceeding six months.</p>	<p>The Proposed amendment was adopted by the Committee</p>
	s.106(1)	<p>Insert the words “or the East African Community Vehicle Load Control Act, 2016” immediately after the words “this Act”.</p>		<p>The proposed amendment seeks to recognize the East African Community Vehicle Load Control Act, 2013 with respect to contravention of the provisions of the Act on removal of vehicles from the road.</p>	<p>The section is sometimes abused by police officers and should be amended further:</p> <ul style="list-style-type: none"> (a) to define the time period for the vehicle to be considered abandoned; and (b) to provide that the police officer should not be below the rank of inspector. <p>The Proposed amendment was</p>

					adopted by the Committee
	106 (8)	<p>Delete and substitute therefor the following new subsection-</p> <p>(8) Any person who fails to comply with this section or order given under thereunder commits an offence and is liable on conviction, where no penalty is specifically provided, to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months.</p>		The proposed amendment seeks to prescribe a general penalty for contravention of the provisions of the section.	<p>Delete the word "under" appearing immediately before the word "thereunder" as it is unnecessary.</p> <p>The Proposed amendment was adopted by the Committee</p>
The Kenya Roads Board Act, 1999 (No.7 of 1999).	s.12(2)	<p>Delete and substitute therefor the following new subsection-</p> <p>"(2) A person shall be qualified for appointment as the Executive Director if that person-</p>		<p>The proposed amendment seeks to:</p> <p>(a) widen the professionals who may qualify as Executive Director;</p> <p>(b) Prescribe additional requirements for</p>	The qualifications for the Executive Director should be the same as those in the Roads Bill, 2017 which is currently under consideration by the Senate.

	<p>(a) holds a Master's degree in finance, accounting, law or engineering from a university recognised in Kenya;</p> <p>(b) has knowledge and at least ten years' experience in a relevant field;</p> <p>(c) has served in a senior management position for a period of at least five years; and</p> <p>(d) Satisfies the requirements of Chapter Six of the Constitution.</p> <p>”</p>		<p>qualification for appointment of the Executive Director of the Kenya Roads Board, that is, a Master's degree from a university recognised in Kenya and have served in a senior management position for a period of at least five years.</p>	
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The National Construction Authority Act, 2011 (No. 41 of 2011).	s.18(5)	Delete the expression “section 14 and 16” and substitute therefor the expression “section 16”.	The National Construction Authority was agreeable to all the proposed amendments.	The proposed amendment seeks to correct a cross-referencing error. Section 14 deals with co-option of members and establishment of Committees and is not applicable to section 18 (5).	The Act should be amended to reflect the change of term from “Minister” to “Cabinet Secretary”. The Committee accepted the amendment.
	s.27(3)	Insert the words “under section 26(4)” at the end thereof.		The proposed amendment seeks to correct a drafting error as the section is incomplete.	This is in order. The Proposed amendment was adopted by the Committee
	s.30(c)	Delete the expression “expression “Section 31”.		The proposed amendment seeks to correct a cross-referencing error.	This is in order. The Proposed Amendment was adopted by the Committee
	s.42(2)	Delete the expression “section 29” appearing in paragraph (a) and substitute therefor the expression “section 31”.		The proposed amendment seeks to correct a cross-referencing error.	This is in order. The Proposed amendment was adopted by the Committee
The Engineers Act 2011	s.23(6)	Delete the full stop at the end thereof and add	The Engineers Board of Kenya was	The proposed amendment seeks to provide for extension	This is in order. However, it may be abused by foreign

<p>(No. 43 of 2011).</p>		<p>the words “and may approve the extension of the renewal of such registration for the purpose of completing the works referred to in subsection (4)”.</p>	<p>agreeable to the proposed amendment.</p> <p>Kenneth Samoei</p> <p>(a) S. 5 (g) (i)- delete the word “nominated” and substitute therefor the word “elected”;</p> <p>(b) S. 7 (1) (l) – delete as the provision contravenes the Universities Act, 2012;</p> <p>(c) S. 7 (1) (o) – delete the word “school of engineering” and substitute with the word “programme”. This is because the Board draws</p>	<p>of renewal of registration of foreign engineers where works have not been completed.</p>	<p>engineers who may desire to extend their stay in the country.</p> <p>The Proposed amendment was adopted by the Committee</p>
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			<p>funds from the exchequer. The fund earmarked for establishing a school will be prudently utilized in enhancing university facilities.</p> <p>(d) S. 16 (a) (iii) – insert the words “or any professional as may be approved by the Board”;</p> <p>(e) S. 46 – delete. This section contravenes section 5A of the Universities Act, 2012 and has rendered many government sponsored students and</p>		
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			<p>graduates in limbo. This provision also interferes with the autonomy of a chartered university.</p> <p>NB. These provisions are in contravention of Standing Order 133 (5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject matter or proposes to unreasonably or unduly expand the subject of the Bill or is inappropriate or is not in logical sequence to the subject matter</p>		
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<p>The National Transport and Safety Authority Act, 2012 (No. 33 of 2012).</p>	<p>s.2</p>	<p>Delete the definition of the word “Cabinet Secretary” and substitute therefor the following new definition -</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the Authority.</p>	<p>of the Bill</p> <p>The National Transport and Safety Authority (NTSA) and the Ministry of Transport, Infrastructure and Urban Development were opposed to all the proposed amendments on grounds that they did not originate from them; they were never consulted or informed; the proposed amendments are substantive in nature and that the Statute Miscellaneous Acts are limited to minor corrections and amendments; the proposed amendments have far reaching consequences and if adopted would reverse the tremendous gains achieved by NTSA; the proposed</p>	<p>The proposed amendment seeks to provide that reference to the Cabinet Secretary in the Act refers to the Cabinet responsible for the Authority as opposed to the Cabinet Secretary responsible for matters relating to transport.</p>	<p>The Cabinet Secretary is functionally responsible and cannot just be responsible to a specific body.</p> <p>The Proposed amendment was rejected by the Committee</p>
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			<p>amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of NTSA; and the proposed amendments create glaring vacuums and lacunas as they lack transition clauses, should the amendments be adopted.</p>		
	s.3(2)	Delete.	<p>Mr. Stephen Kiama It is not clear what will remain of the Authority if these amendments are implemented.</p>	<p>The proposed amendment removes the body corporate powers of the Authority.</p>	<p>The Proposed amendment is substantive in nature and requires broad stakeholder engagement hence should not be in the Statute Law Miscellaneous (Amendment) which is supposed to make only minor amendments to existing legislation.</p> <p>The Proposed amendment was rejected by the Committee</p>
	s.5	Delete.	<p>It is not clear what will</p>	<p>The proposed amendment seeks to</p>	<p>The Proposed amendment is substantive in nature</p>

			happen to the already established offices.	remove the requirement for the Authority to have its headquarters in Nairobi and establish offices elsewhere in Kenya.	and requires broad stakeholder engagement hence should not be in the Statute Law Miscellaneous (Amendment) Bill which is supposed to make only minor amendments to existing legislation. The Proposed amendment was rejected by the Committee
	s.15(1)	Delete the word "Board" and substitute therefor the word "Cabinet Secretary".	It is not clear what will be the role of the Board in the recruitment of the Director-General.	The proposed amendment provides that Director General of the Authority is to be appointed by the Cabinet Secretary as opposed to the Board.	The Proposed amendment is substantive in nature and requires broad stakeholder engagement hence should not be in the Statute Law Miscellaneous (Amendment) Bill which is supposed to make only minor amendments to existing legislation. The Proposed amendment was rejected by the Committee
	(3)	Delete the word "Board" and substitute therefor the word "Cabinet Secretary".	This amendment does not make sense.	The amendment does not make sense as the Director-General cannot be an <i>ex officio</i> member of the Cabinet	The Proposed Amendment is substantive in nature and requires broad stakeholder engagement hence

				Secretary.	should not be in the Statute Law Miscellaneous (Amendment) Bill which is supposed to make only minor amendments to existing legislation.
					The Proposed amendment was rejected by the Committee

3. General Observations

While the Committee deliberated on the Bill, it made the following general observations-

- i. As regards to the proposed amendments to the Housing Act, Cap 117, the Committee noted that the Cabinet Secretary should appoint a maximum of six members to the Corporation taking into account the regional and ethnic balance of the people of Kenya, gender, and representation of youths and persons with disabilities.
- ii. As regards to the proposed amendments to the Kenya Ports Authority Act, Cap 309 and the Kenya Airports Authority Act, Cap.395, the Committee was agreeable to the proposed amendments which seek to provide that arbitrators in disputes under the two statutes shall be appointed by the Registrar of the Nairobi Centre for Arbitration instead of the Chief Justice since it would encourage the independence of the courts in matters arbitration.
- iii. As regards to the proposed amendments to the Traffic Act, Cap 403, the Committee noted that-
 - (a) The proposed amendments seek to align the Traffic Act, Cap 403 to the National Transport and Safety Authority Act, No.33 of 2012 since the amendments seek to, among other things define and provide for the appointment of inspectors of motor vehicles and designate authorized officers by the National Transport and Safety Authority; and
 - (b) The proposed amendments seek to recognize the East African Community Load Control Act, 2013 as regards the removal of vehicles from the road and also create an offence with

respect to driving of commercial vehicles while being intoxicated and prescribe a penalty for the same or in accordance with the East African Community Load Control Act,2013;

- iv. As regards to the proposed amendments to the Kenya Roads Board Act, No.7 of 1999, the Committee noted that the Kenya Roads Bill, 2017 which was at the Senate had similar amendments on the qualifications of the Executive Director of the Board and had been passed by the House.
- v. With respect to the proposed amendments to the National Construction Authority Act, No. 41 of 2011, the Committee noted that the amendments were minor amendments seeking to correct cross-referencing mistakes.
- vi. As regards to the proposed amendments to the Engineers Act, No. 43 of 2011,the Committee noted that the amendments only seek to provide for the extension of the renewal of registration of foreign engineers where works have not been completed.
- vii. With respect to the proposed amendments to the National Transport and Construction Authority Act, No.33 of 2012, the Committee observed that the proposed amendments were substantive in nature seeking to remove the corporate powers of the Authority and to also have its offices and establish offices elsewhere.
- viii. The proposed amendments by Mr. Kenneth Samoei to the Engineers Act, No. 43 of 2011 were in contravention of Standing Order 133 (5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject matter or proposes to unreasonably or unduly expand the subject of the Bill or is inappropriate or is not in logical sequence to the subject matter of the Bill.

4. Committee Recommendations

Having considered the Bill, the Committee recommends that-

- i. Section 3(2) of the Housing Act, be further amended in paragraph (d) by-
 - (a) deleting the words “not less than five nor more than seven” and substituting therefor the words “six”; and
 - (b) by inserting the following new paragraph immediately after paragraph (d) –

“(h) in appointing the persons under paragraph (d), the Cabinet Secretary shall ensure that

—

- (i) It reflects the regional and ethnic diversity of the people of Kenya;
 - (ii) Not more than two thirds of the members are of the same gender; and
 - (iii) Youths and persons with disability are represented.
- ii. The Traffic Act, Cap 403 be further amended in section 2 by deleting the definition of the term “driving test examiner”;
 - iii. The proposed amendment to section 8 of the Traffic Act, Cap 403 be deleted;
 - iv. The proposed amendment to section 57 of the Traffic Act, Cap 403 be deleted;
 - v. The proposed amendment to Section 58 of the Traffic Act, Cap 403 be further amended by inserting the words “or in accordance with the East African Commercial Vehicle Load Control Act, 2013” before the words “shall be guilty”;
 - vi. The proposed amendment to section 70 (5B) of the Traffic Act, Cap 403 be deleted;
 - vii. The proposed amendment to section 85 of the Traffic Act, Cap 403 be deleted;
 - viii. The proposed amendment to Section 106 (8) of the Traffic Act, Cap 403 be further amended by deleting the words “under” appearing immediately before the word “thereunder”;
 - ix. The proposed amendment to section 12(2) of the Kenya Roads Board Act, No.7 of 1999 be amended by deleting the word “Master’s” appearing in paragraph (a);
 - x. The proposed amendment to section 2 of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
 - xi. The proposed amendment to section 3(2) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
 - xii. The proposed amendment to section 5 of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
 - xiii. The proposed amendment to section 15(1) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;
 - xiv. The proposed amendment to section 15(3) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted;



ENGINEERS BOARD OF KENYA

ENGINEERS BOARD OF KENYA

MEMORANDUM ON PROPOSAL FOR CONSIDERATION BY THE NATIONAL ASSEMBLY

IN THE MATTER OF:

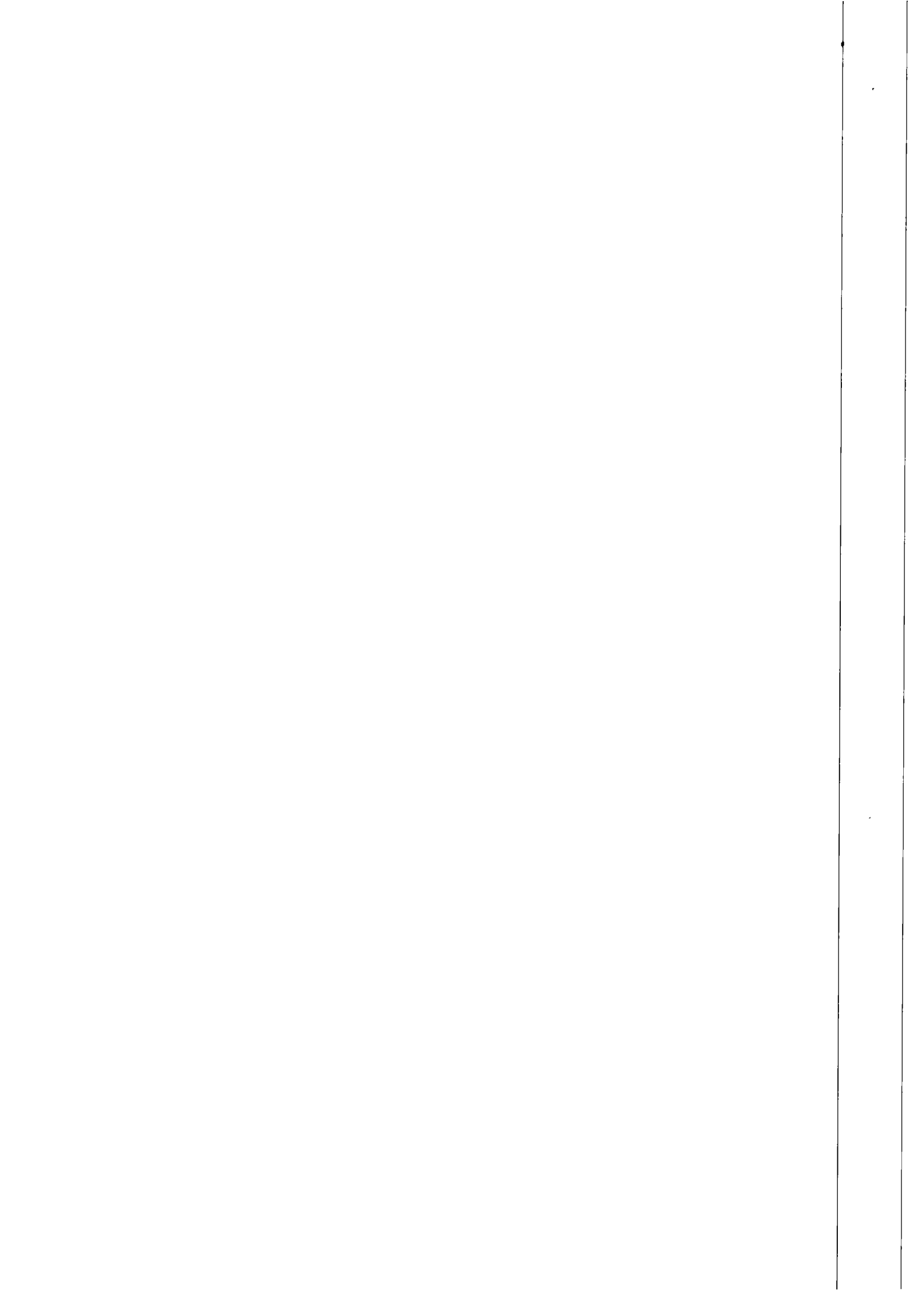
ENGINEERS ACT 2011

SUBMITTED BY:

ENGINEERS BOARD OF KENYA (EBK)

JUNE 2018

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14/6



1.0 Introduction

The Engineers Board of Kenya (EBK) is a statutory body established under Section 3 (1) of the Engineers Act 2011 and is responsible for the registration of engineers and engineering firms, regulation of engineering professional services, setting of standards, development and general practice of engineering.

Other key mandates and functions of the Board include setting of engineering services and standards, enter and inspect sites where construction, installation, erection, alteration, renovation, maintenance processing or manufacturing works are in progress for the purpose of verifying that professional engineering services are being undertaken by qualified and registered engineers.

2.0 Proposal for consideration by the National Assembly with regard to Engineers Act 2011

Engineers Board of Kenya is proposing the following amendment to the Engineers Act, 2011.

Section 23 (6) be amended as follows:

Delete the full stop at the end thereof and add the words "and may approve the extension of the renewal of such registration for the purpose of completing the works referred to in subsection (4)."

3.0 Rationale for miscellaneous amendment

Section 23(4) of the Act provides that "The registration of a person under this section shall be valid for the period or for the duration of the work specified by the Board"

The amendment seeks to provide clarity on what should happen in an event where a project will not have been completed during the specified period under section 23(4) above.

4.0 Recommendation

Section 23 (6) be amended as follows:

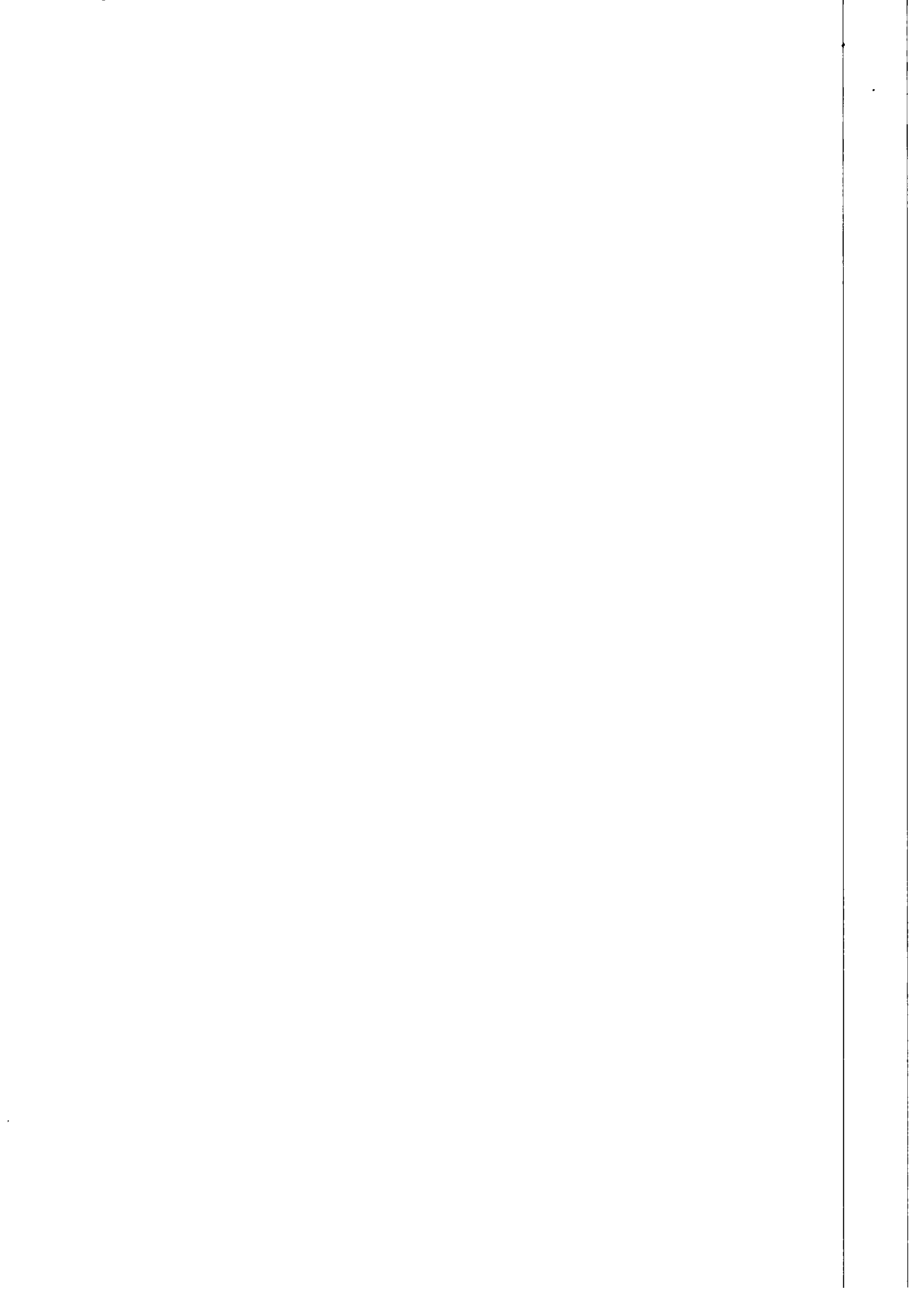
Section 23 (6) be amended as follows:

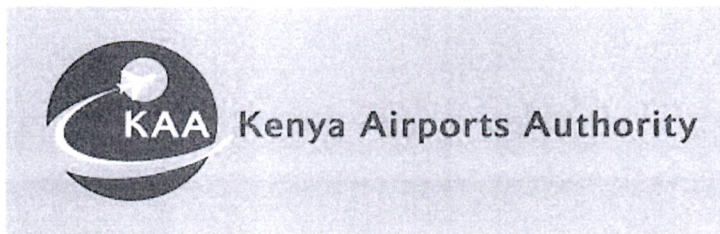
Delete the full stop at the end thereof and add the words "and may approve the extension of the renewal of such registration for the purpose of completing the works referred to in subsection (4)."

SUBMITTED BY: ENG. NICHOLAS M. MUSUNI, REGISTRAR/CEO EBK

SIGNED:

DATED: 14/06/2018





BRIEF ON STAKEHOLDER SUBMISSIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILLS NO. 12)

The Authority is to make submissions on amendment of Section 33(1) of the Kenya Airports Authority Act.

Section 33 (1) of the Kenya Airports Authority Act is on Compensation and states as follows:-

In the exercise of the powers conferred by sections 12, 14, 15 and 16, the Authority shall do as little damage as possible; and, where any person suffers damage no action or suit shall lie but he shall be entitled to such compensation therefor as may be agreed between him and the Authority or, in default of agreement, as may be determined by a single arbitrator appointed by the Chief Justice.

The Amendment Bill in its Memorandum of Objects and Reasons proposes to amend the Kenya Airports Authority Act to provide that arbitrators in disputes under the Act shall be appointed by the Registrar of the Nairobi Centre for International Arbitration in place of the Chief Justice. The Bill intends to do this by amending Section 33(1) as follows:-

Delete the expression "Chief Justice" Authority Act and substitute therefor the words "Registrar of the Nairobi Centre for of International Arbitration established under the Nairobi Centre for International Arbitration Act, 2013".

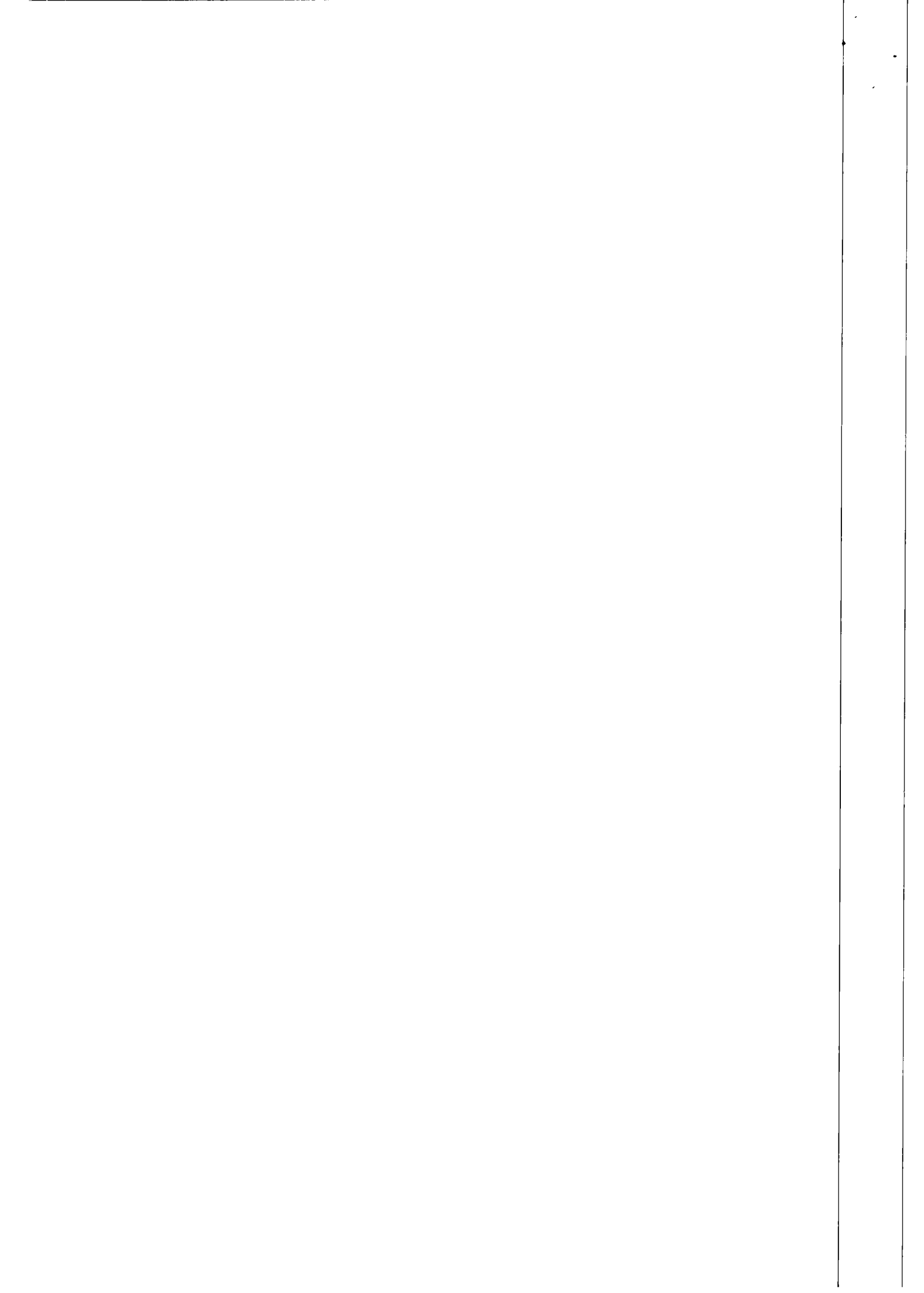
A benefit of the proposed amendment is that there will be improved turnaround time in resolution of matters referred to arbitration as the process of appointment of arbitrators will be expedited. This is in view of the Registrar unlike the Chief Justice largely handling arbitration, which is only one out of the many avenues of dispute resolution fora.

Notwithstanding the foregoing, the shortcomings of the proposed amendment are that:-

It fails to take cognizance of the industry specific expertise that is required in resolution of disputes arising from the Authority exercising its powers under the Act. This is evident in the proposed amendment's failure to set out the criteria to be employed in appointment of arbitrators in disputes requiring industry specific expertise such as relevant qualifications and experience.

There are no timelines set for appointment of arbitrators by the Registrar and conclusion of the proceedings to ensue thereafter.

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To this end the Authority proposes establishment of Dispute Resolution Tribunal as follows:-

Establishment of Tribunal

(1) There is established a tribunal to be known as the Kenya Airports Authority Administrative Review Tribunal which shall consist of—

- (a) a Chairperson nominated through a competitive process by the Judicial Service Commission, who shall be a person qualified for appointment as a Judge of the High Court of Kenya;
- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya through a competitive process with knowledge, experience and professional qualifications in aviation law;
- (c) two persons to be recruited through a competitive recruitment process from the aviation industry who shall have knowledge and experience in airport operation matters; and
- (d) one other person recruited competitively and who shall be a holder of such other qualifications and experience of proven ability in such other fields as the Cabinet Secretary may deem necessary.

(2) All appointments to the Tribunal shall be done by the Cabinet Secretary by name and through a Gazette notice.

(3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

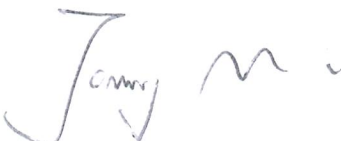
(4) In appointing members of the Tribunal, regard shall be taken to ensure that no more than two-thirds of the members of the Tribunal shall be of the same gender and that the chairperson and the vice-chairperson shall not be of the same gender.

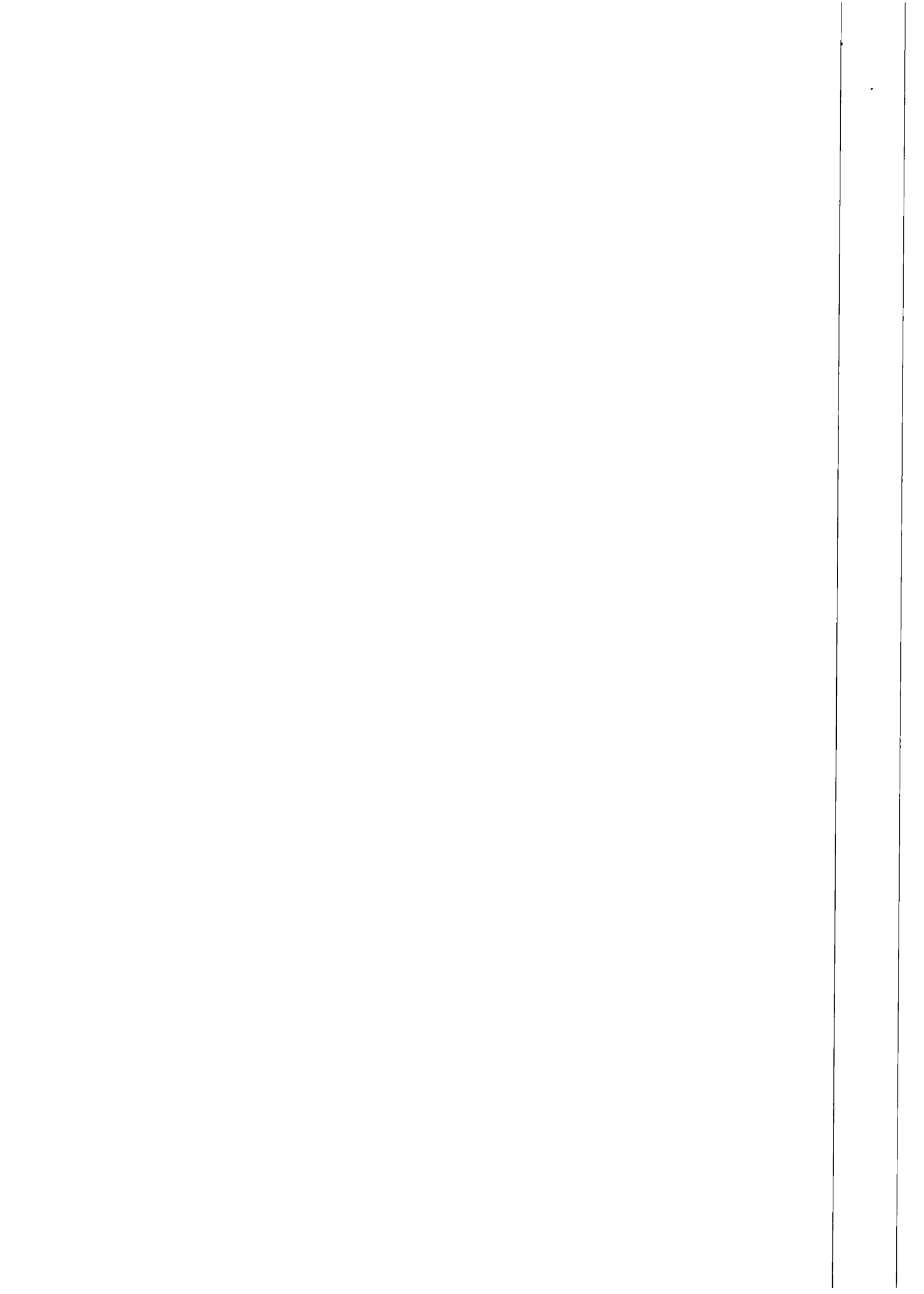
Tenure and vacation of office

(1) A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of his or her appointment;
- (b) if he or she accepts any office the holding of which, if he or her were not a member of the Tribunal, would give rise to the existence of a conflict of interest with his or her membership to the Tribunal;
- (c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary upon findings of an inquiry determining his or her failure to discharge the functions of his or her office (whether arising from infirmity of body or mind or from any other lawful cause) or for misbehavior;
- (d) if he or she resigns the office of member of the Tribunal; or
- (e) upon death.





(3) Members of the Tribunal shall be paid allowances approved by the Cabinet Secretary, in consultation with the Cabinet Secretary for the time being responsible for matters relating to finance.

Secretary to the Tribunal

(1) The Tribunal shall have a Secretary who shall be a public officer appointed by the Cabinet Secretary through an open and competitive process.

(2) The Secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his or her functions.

(4) The Secretary shall perform any other functions determined by the Tribunal.

Jurisdiction of the Tribunal

The Tribunal shall have the jurisdiction to hear and determine complaints or appeals arising from—

(a) exercise of the Authority's powers under Sections 12, 14, 15 and 16 of the Act;

(b) any exercise of powers to make decisions, but not powers in respect of staff employment, granted to the Managing Director or the Authority under this Act or regulations made thereunder.

Proceedings of the Tribunal

(1) The Tribunal shall, upon an appeal made to it in writing, within thirty days after the occurrence of the event against which a party is dissatisfied, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.

(2) The Tribunal shall sit at such times and in such places as it may appoint by Gazette Notice.

(3) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(4) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.

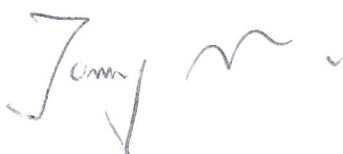
(5) A person who is party to the proceedings before the Tribunal may appear in person or be represented by an advocate of the High Court.

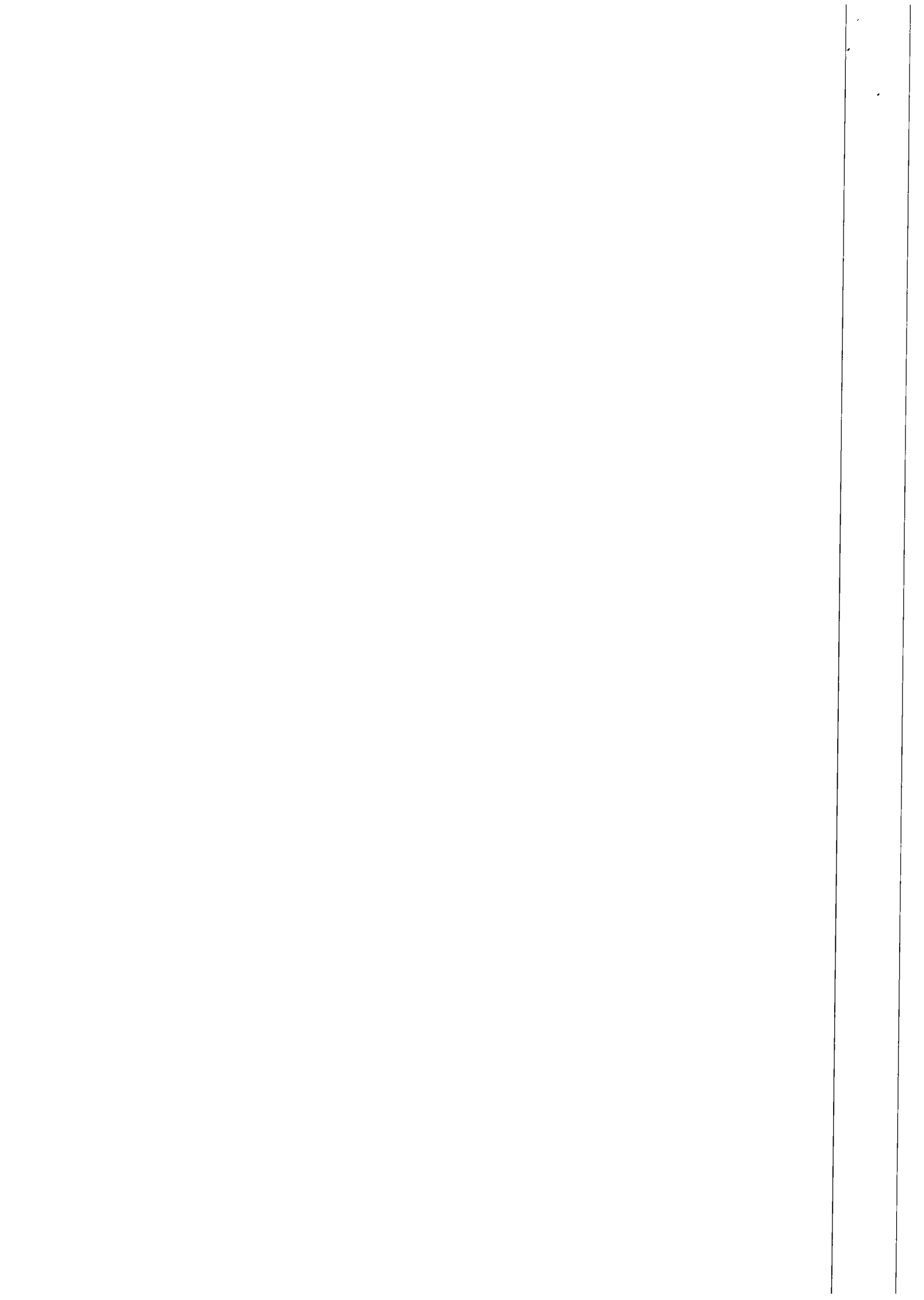
Powers of the Tribunal

(1) On hearing of a complaint or an appeal, the Tribunal shall have all the powers to—

(a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or

(b) summon expert evidence as may be necessary.

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(2) Where the Tribunal considers it desirable for the purposes of minimising expenses, to avoid delay or for any special reason, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories have been made to respond.

Awards of the Tribunal

(1) The Tribunal may—

(a) award damages;

(b) confirm, set aside or vary the order or decision in question; or (c) make an order for the maintenance of the status quo of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have power to award the costs of any proceedings before it and direct that the costs shall be taxed in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(3) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him or her a certificate stating the amount of the costs.

(4) Every certificate issued under subsection (3) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

(5) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto, and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act (Cap. 21) shall apply.

(6) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

(7) All summons, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to be issued by the Tribunal.

Appointment of assessors

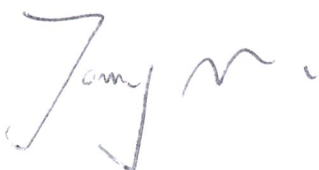
The Chairperson of the Tribunal, in consultation and with the concurrence of two other members of the Tribunal, may appoint in writing any person with special skills or knowledge on aviation issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

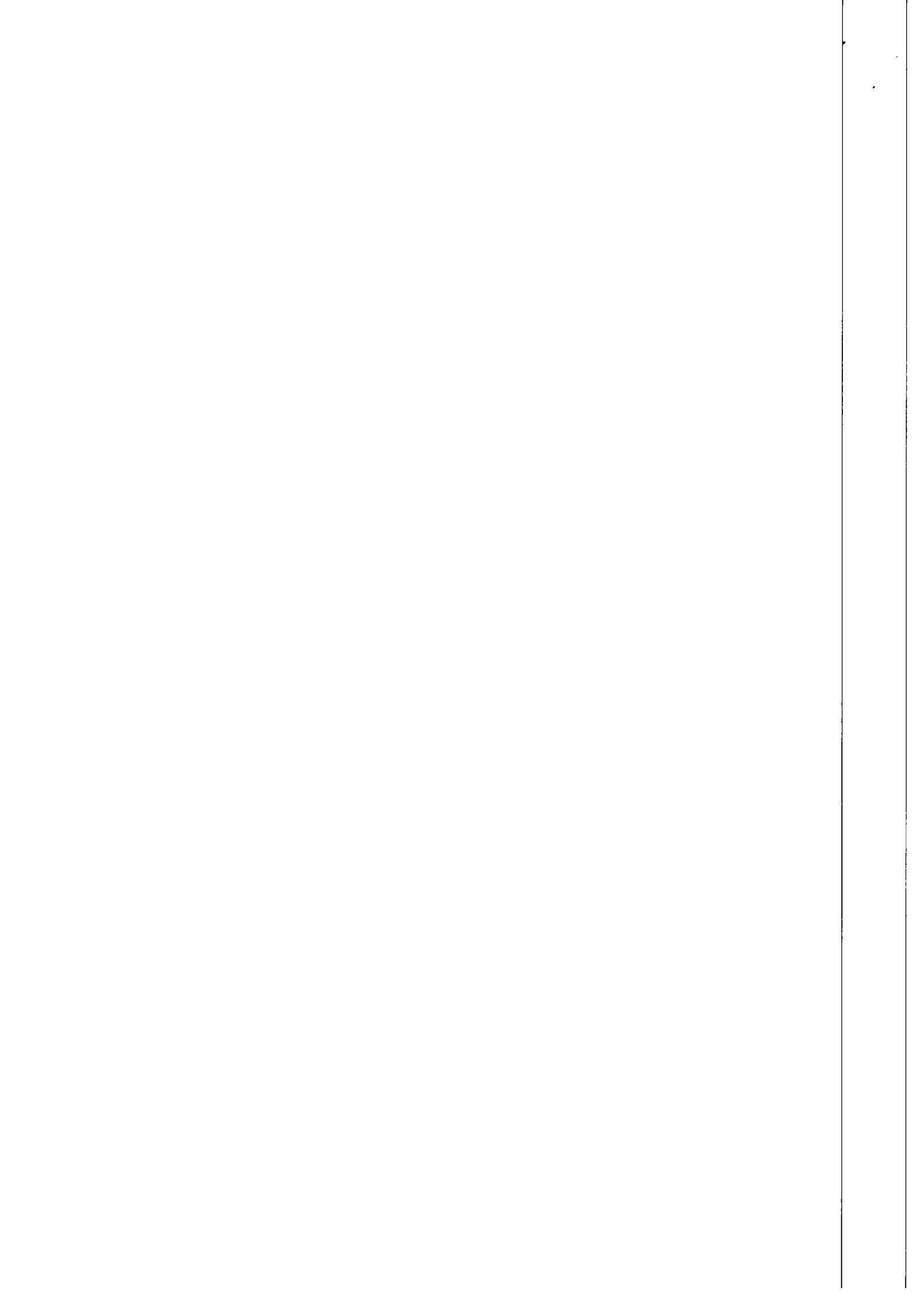
Contempt of the Tribunal

Any person who—

(a) fails to attend the Tribunal after being summoned by the Tribunal to do so;

(b) refuses to take oath or affirmation before the Tribunal, or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;

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(c) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or

(d) at any sitting of the Tribunal—

(i) wilfully insults any member or officer of the Tribunal; or

(ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;

(e) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal, commits an offence under this Act and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings or imprisonment to a term not exceeding three months, or to both.

Quorum for Tribunal

For the purposes of hearing and determining any cause or matter under this Act, the Chairperson and two other members of the Tribunal shall form a quorum.

Disclosure of interest

A member of the Tribunal who has a direct interest in any matter that is the subject of the proceedings before the Tribunal shall disclose in writing the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

Appeals to the High Court

(1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court.

(2) A decision or order of the Tribunal shall be enforced forthwith except where an appeal has been lodged or commenced provided that the lodging or commencing of an appeal shall not on its own, operate as a stay.

(3) Upon the hearing of an appeal under this section, the High Court may—

(a) confirm, set aside or vary the decision or order in question;

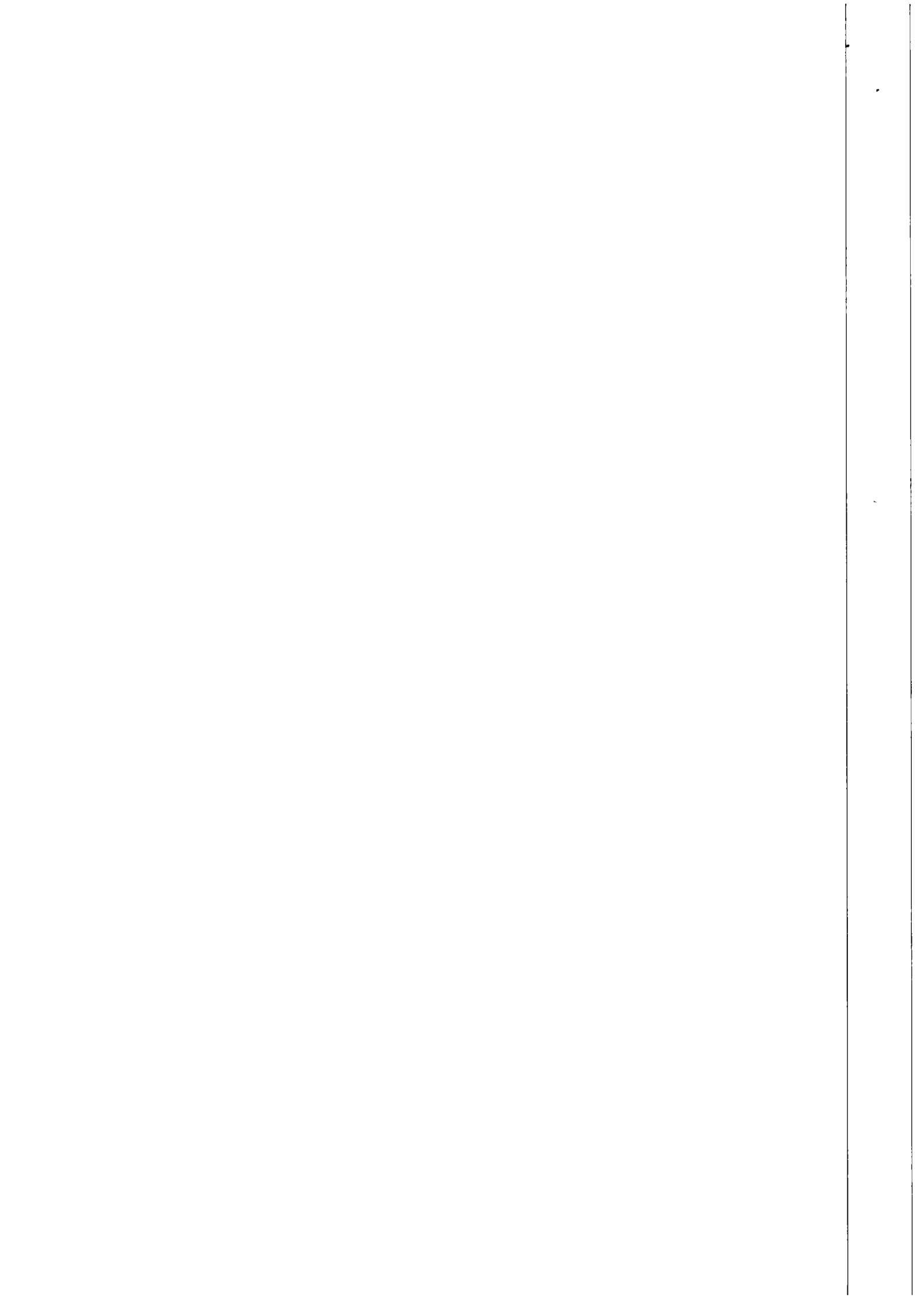
(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem fit to give;

(c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

(d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

Appeals to the Court of Appeal

A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal on matter of law.



Protection from personal liability

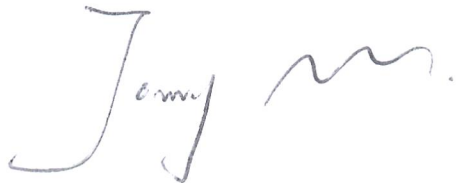
The Chairperson or any other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of, and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal.

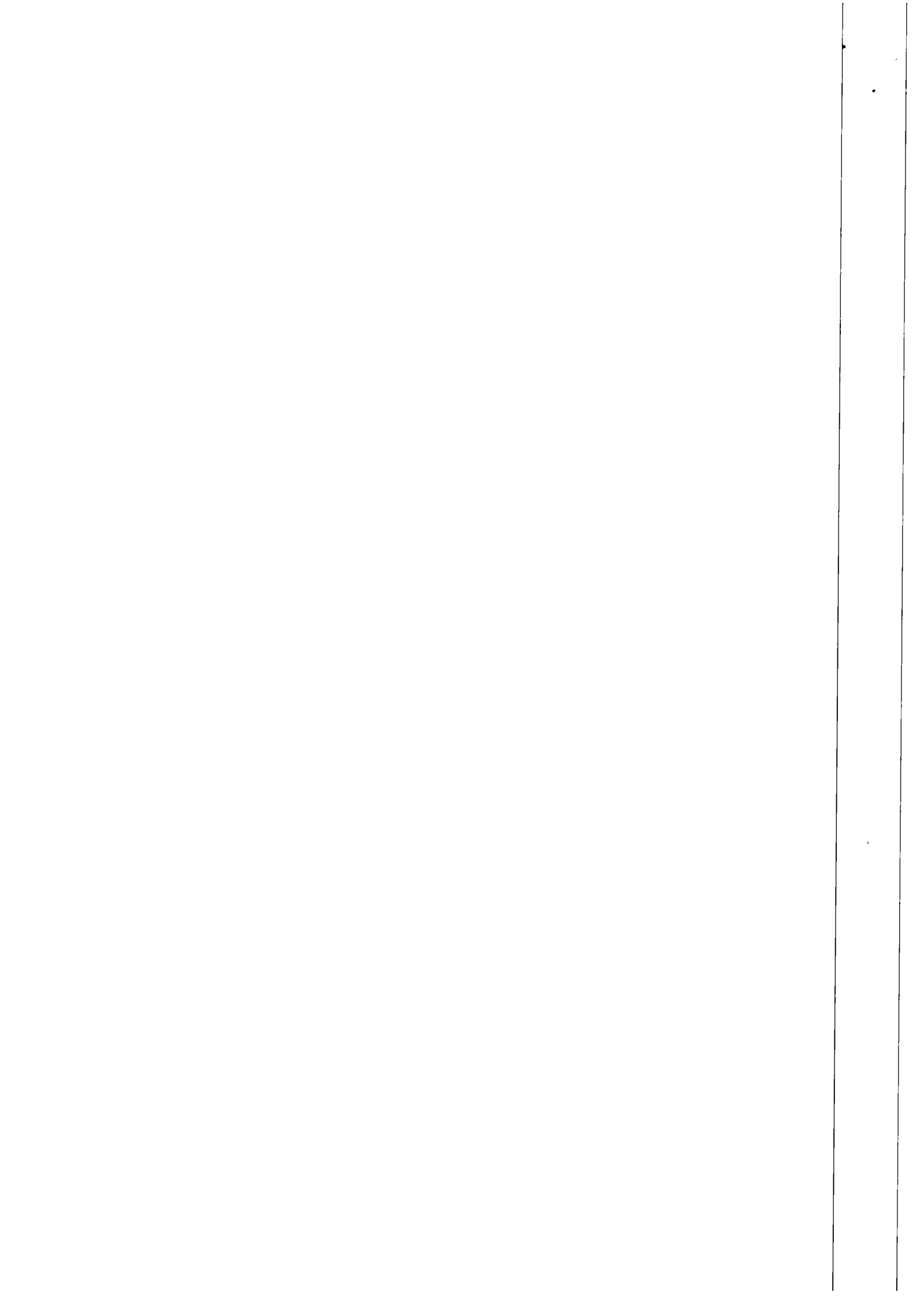
STATUS OF THE KAA LEGAL INSTRUMENTS

The Authority is in the process of reviewing its Act to align it to the provisions of the Constitution, the regulatory framework governing the aviation industry and best practice. The Draft Bill has been forwarded for the Ministry for concurrence and forwarding to the Office of the Attorney General for their review and formulation of the final draft.

A *layman's draft* of the KAA regulations is being prepared and the same upon finalization shall be forwarded to the Office of the Attorney General for their review and formulation of the final draft.

The process of harmonization, consolidation and review of the Authority's rates for Animal Holding; the Concession Order of 1996; Rental and Building; and Ground Transportation has commenced. To this end as the Authority prepares the *layman's draft* of the regulations as a matter of prudence it has requested Ministerial approval to submit the proposed rates to the Committees on Transport and Delegated Legislation for their deliberation and facilitation of stakeholder engagement for purposes of Gazettement.







NTSA SUBMISSIONS TO THE PROPOSED AMENDMENTS TO THE TRAFFIC ACT CAP 403 - STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2018

Section 4(1)(e) of the National Transport and Safety (NTSA) Act places the responsibility to administer the Traffic Act on NTSA.

Pursuant to this responsibility NTSA proposed and supports the below listed amendments which are contained in the Miscellaneous Amendment Bill 2018:-

SECTION	PROPOSED	RATIONALE
Section 45 Prohibition of drinking when driving or in charge of a Public Service Vehicle.	Any person who, when driving or in charge of, or during any period of duty in connexion with the driving of, a public service vehicle, or a commercial service vehicle drinks any intoxicating liquor shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both	Inclusion of commercial service vehicles in this section to prohibit them from driving when consumed any intoxicating liquor.
Section 39(1)	<i>(1) Driving test for the purpose of this Act shall be conducted by the Authority.</i>	Driver test examiners are defined in section 2 as those persons appointed under section 3(3) of the Traffic Act. However following the enactment of The National Transport and Safety Authority Act 2012, section 3 was amended by deleting section 3(3). This therefore means that there is no definition of a driver test examiner yet section 39(1) provides for driving test to be conducted by them.
Section 70(5B).	Deletion of section 70(5B). This Section provides for a minimum penalty of Ksh 20,000 for	This section has caused a lot of confusion as some proponents have argued that the section means that a person does not commit an offence

	<p>anyone exceeding the prescribed speed limit by more than 20 kph.</p>	<p>unless the speed limit is exceeded by more than 20 kph.</p> <p>Others including the Authority have argued that this section creates a minimum penalty for those who violate the speed limit by more than 20 kph.</p> <p>This confusion has also extended to the Judiciary with some courts adopting the minimum penalty interpretation and others the no offence interpretation. In order to clarify this we propose the deletion of Section 70(5B).</p>
<p>Section 8</p>	<p>insert the following new subsection)- "(2) Any person who issues a motor vehicle insurance cover to a person other than the registered owner of the vehicle commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years for a first offence, and to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding two years for each subsequent offence.</p>	<p>The inclusion of this section will not only ensure that motor vehicle insurance covers are given to the true owners of the vehicle therefore minimizing fraud but also support the implementation of section 9 which requires the transfer of ownership of vehicles within 14 days</p>
<p>Section 85 Driving under influence of drink.</p>	<p>85. Subject to section 45, any person who when driving or attempting to drive, or when in charge of a vehicle, other than a motor vehicle, on a road or other public place is under the influence of drink or a drug <u>beyond the limits prescribed</u> by the Cabinet Secretary shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.</p>	<p>i. To ensure that there is no conflict with section 45 which prohibits the consumption of any intoxicating liquor for PSV (and CSV, if amended).</p> <p>ii. To support the use of prescribed limits for all other drivers as provided in the Breathalyzer Rules.</p>



**NATIONAL TRANSPORT AND SAFETY
AUTHORITY
(NTSA)**

**NTSA MEMORANDUM ON THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) BILL,
2018**

JLN

EXECUTIVE SUMMARY.

This memorandum contains the National Transport and Safety Authority's (NTSA) submissions on the proposed amendments to the National Transport and Safety Act No 33 of 2012 contained in the Statute Miscellaneous Bill 2018.

The Memorandum is divided into the following four parts:-

Part 1 – Why NTSA was established. This part gives a brief historical account of the factors that necessitated the formation of NTSA. This include the need for a strong institutional framework in the management of the road transport subsector whose management was not only fragmented but disjointed and uncoordinated prior to the formation of NTSA.

Part 2 – Achievements of NTSA. This part analyses the achievements NTSA has accomplished in the 3 years it has been in existence in terms of improved service delivery, reduction in loss of life through road accidents, enhanced legislative and regulatory environment and revenue growth for the government in the road transport subsector.

Part 3 – Analysis of the proposed amendments. This part gives a comprehensive analysis of the proposed amendments and subsequent implications.

Part 4 – Observations and Recommendations. This part contains NTSA's observations and recommendations to the proposed amendments. This include the lack of participation or involvement of NTSA in the formulation of the proposed amendments and the adverse consequences and reversal of gains made in the road transport subsector attendant to the proposed amendments. .

1.0. WHY NTSA WAS ESTABLISHED

Before the formation of the Authority its current functions were split between several different Government Agencies/institutions as follows:-.

Institutional set up prior to NTSA's establishment

Agency/Institution	Function
Ministry of Transport	Policy formulation
Transport Licensing Board (TLB)	Transport licensing and regulation.
National Road Safety Council	Road safety education, road safety audit, road safety research and road safety data
National Police Service (Motor Vehicle Inspection Unit)	Vehicle inspection and certification
Road Transport Department/ Registrar of Motor Vehicles	Vehicle registration and driver licensing
Kenya Revenue Authority/ Registrar of Motor Vehicles (KRA)	Collection of Revenue, Vehicle registration, Driver licensing.
National Police Service/Traffic Police Department	Driver testing and Enforcement of traffic laws.
Ministry of Local Government	Allocation of pickup and drop off points and licensing of taxis
Ministry of Roads Infrastructure	Infrastructure Development

The above institutional framework where multiple agencies or institutions dealt with different aspects of road transport and safety led to a scenario where the management of the road transport subsector in Kenya was not only fragmented but disjointed and uncoordinated.

These disjointed and uncoordinated approach to the management of road transport subsector led to a weak institutional framework resulting in an unsafe, unreliable and inefficient road transport system in Kenya.

Indeed the Sessional Paper Number 2 of 2012 on Integrated National Transport Policy identified the institutional framework as was as the main

challenge in the management of the road transport subsector in Kenya and recognized the need for a single lead agency.

Further the UN Decade of Action (The Moscow Declaration) which Kenya is a party to recommended the formation of a lead agency to address Road Safety challenges.

In recognition of the above, the Ministry of Transport and Infrastructure (MoTI) engaged various stakeholders including Government, Non-governmental agencies, Transport operators, Parliamentary committees on Transport in formulating the bill that was presented in Parliament leading to the establishment of NTSA via Act. No.33 of 2012 whose main functions were to:-

- (a) advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety;
- (b) implement policies relating to road transport and safety;
- (c) plan, manage and regulate the road transport system in accordance with the provisions of this Act;
- (d) ensure the provision of safe, reliable and efficient road transport services; and
- (e) administer the Traffic Act.

The delinking process from the multiple agencies and institutions was concluded in 2017 and NTSA has established itself as the lead agency in the management of the road sub sector.

The Authority is headquartered in Nairobi with 17 regional offices across the country and a dedicated staff complement of 703 employees.

2.0. ACHIEVEMENTS OF NTSA TO DATE

NTSA started its full operations in July 2014. Over the short time of its existence the Authority has achieved the following;

2.1. **Improved service delivery.**

NTSA has drastically improved service delivery to the public by leveraging on ICT and reengineering established processes in the following areas:-

a. **Motor Vehicle Inspection**


Before the formation of NTSA, motorists waited for more than three (3) days in queues for vehicles to be inspected at the centers. Indeed it was a common sight to find numerous vehicles parked for several kilometers outside inspection centers.

This was mainly due to inefficient processes and a dilapidated motor vehicle inspection infrastructure where all services were done manually.

NTSA upon delinking embarked on modernizing the Inspection centers (Nairobi -Likoni and Mombasa - Miritini inspection centers). Further NTSA invested in ICT in the management of the inspection process resulting in the online booking of motor vehicle inspection. Under this system, booking and payment is done online from the convenience of a motorists' home or office and the motorist is given the opportunity to choose the date, venue and time of inspection. This has significantly improved service delivery resulting in tremendous savings in terms of time and money.

There has also been a significant increase in the number of vehicles undergoing inspection from one hundred and fifty thousand (150,000) annually, to three hundred and forty eight thousand (348,000). It is important to note that the inspection process significantly contributes to the reduction in road fatalities by assessing the road worthiness of vehicles on our roads.

Currently NTSA is in the process of rehabilitating and upgrading the other remaining Inspection centers while it pursues outsourcing of vehicle inspection services.



b. Driving Licenses, Motor Vehicle Registration and Licensing Process

Before the inception of NTSA, the process of applying or renewing a driving licenses, road service licenses and registration of vehicles was time consuming and cumbersome with drivers, motorist and owners having to queue all day at KRA banking halls.

Today, the same process hardly takes ten minutes and can be done from the comfort of the driver's offices or homes. This has greatly improved efficiency, customer service and ease of doing business.

It is important to note that NTSA inherited outdated systems for registration and licensing from KRA. These systems were developed in-house and were easily manipulated without audit trail. In addition, they were not web based forcing customers to visit KRA Offices for services hence poor service delivery.

Through the support of the World Bank and ICT Authority, NTSA has acquired a state of the art system; the Transport Integrated Management System (TIMS). The system incorporates all functions of NTSA into a single database. This has transformed the way the Authority interacts with its customers in terms of access and convenience as the system is web based and is available 24/7. Further, the Authority has eliminated the need for cash transactions and minimized human interaction in our processes. The online platform is cost saving, transparent and accountable.

In addition NTSA is currently rolling out the new generation Driving License which has the following features: identifying the holder through biometrics, demerit point system and a payment wallet to facilitate the payment of instant fines.

In conclusion it is worthwhile to note that NTSA has made tremendous strides in improving service delivery to the public by having all its services online and streamlining all processes. This has resulted in increased efficiency, improved accessibility to services (the public can access the services from anywhere and at any time through the ecitizen portal), sealed revenue leakages and enhanced accountability.

2.2 Reduction in loss of lives through road accidents.

The burden of road crashes and injuries on Kenya is immense. An estimated 3,000 deaths from road crashes occur annually in Kenya with an estimated economic cost of 5.6% of the GDP~300 billion Kenya shillings annually.

Since its formation NTSA has managed to considerably reduce the loss of lives through road fatalities. This reduction is directly attributable to the efforts of NTSA through the following:-

- Implementation of pedestrian safety interventions including the installation of pedestrian fences (guard rails) along identified High risk roads in Nairobi. The initiative saw a reduction of pedestrian fatalities by 40%.
- Enhanced coordination and harmonization of the activities of various Road safety actors including Government agencies and private sector players through the development of a National Road Safety Action Plan.
- Provision of strategic leadership and direction in formulation and implementation of Road Safety Prevention and mitigation Programs in line with the five pillars of the UN Decade of Action for Road Safety 2011-2020.
- Improved data collection and analysis enabling identification of high risk roads, drivers, vehicles and times which inform intervention measures and priority areas for action.
- Development of a new and comprehensive driver training and testing curriculum. The aim of this curriculum is to professionalize and standardize the training of drivers for quality hence a positive impact on road safety.
- Establishment and operationalization of the County Transport and Safety Committees (CTSCs) as provided for in the NTSA Act 2012. Their primary role is to oversee the management and regulation of the road transport system by the Authority at the county level.
- Enhancement of knowledge and public awareness on safer road use through various programs and campaigns targeting all categories of road users particularly on the highest risk roads through meetings, media campaigns, Alco-blow operations and spearheading the development of Road safety incorporation into the new basic education curriculum.

-Conducting road audits on high risk and newly built to establish the risks and safety interventions required.

In conclusion it is worthwhile to note that road fatalities have reduced despite an increase in the risk factors such as vehicle population and road network.

2.3 Enhanced legal regulation and management of the Road Transport Subsector.

NTSA has since 2014 developed and caused the enactment of several statutory instruments to enhance the regulation and management of the road transport sub sector as detailed below:

	REGULATION	PURPOSE
1	NTSA Operation of Motorcycles Regulations 2014.	This regulation is currently in force and provides a legislative basis for the regulation of operation of motorcycles and in particular boda boda and tuk tuks.
2	NTSA Operation of Public Service Vehicles 2014.	Currently in force and provides a legislative basis for the regulation of operation of public services vehicles. It introduced the requirements of Sacco's and body corporates.
3	NTSA Operation of Tourist Service Vehicles 2015.	Currently in force and its purpose is twofold:- <ul style="list-style-type: none"> - To differentiate the operation of tourist service vehicles (TSV) from public service vehicles. - To regulate the activities of TSVs.
4	Traffic Registration Rules 2016.	Currently in force and its purpose is twofold:- <ul style="list-style-type: none"> -to introduce and anchor the new generation number plates in law. -to introduce and anchor in law the third license plate sticker (e-sticker).

5	Traffic Minor Offences 2016 (Instant fines).	Though enacted, is not operational due to a pending court case. Its purpose was to provide a legislative basis for the instant fines for minor offences.
6	NTSA Operations of Commercial Service Vehicles.	Not yet enacted and its purpose is to provide a legislative basis for the regulation of the activities of commercial vehicles.
7	Traffic Driving School and Instructor Rules.	Currently in force and provides a legislative basis for the regulation of driving schools, instructors and driving licenses.
8	The Motor Vehicle Inspection Regulations, 2018	Not yet enacted. Its purpose is to provide a legislative basis for the inspection of all vehicles and out sourcing of inspection centers.
9	Revision of Traffic Act	The Authority is currently undertaking an entire overhaul of the Traffic Act Cap 403.

2.4 Increase in Revenue for the Government.

Before NTSA was formed, the total traffic revenue collected by various government agencies in the road transport sub sector was slightly above Kshs. 2 Billion. Owing to the introduction and implementation of various interventions and innovations by NTSA, the revenue has grown to close to Ksh. 4 Billion which translates to a revenue increase for the Government of 100%. Of this total amount collected, 27% is Appropriation in Aid whilst 73% is Exchequer revenue.

3 ANALYSIS OF THE PROPOSED AMENDMENTS

The Statute miscellaneous Bill 2018 proposes to make the following amendments to the NTSA Act No 31 of 2012 whose effect is as follows:-

Amendment 1.

Section proposed to be amended:- Section 2 NTSA Act

What the section currently provides

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to transport;

Proposed amendment.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the Authority”.

Implication.

-The effect of this amendment is to create ambiguity to the definition of the term Cabinet Secretary. If the amendment is adopted, the Cabinet Secretary referred to in the Act becomes ambiguous and capable of different interpretations.

- The functions of the Authority as listed in the NTSA Act relate to the transportation sector. Therefore the appropriate Cabinet Secretary responsible for matters relating to transport is the appropriate Cabinet Secretary in charge of transport as it currently provided.

Amendment 2.

Section proposed to be amended:- Section 3(2) NTSA Act

What the section currently provides

The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing money;

(d) entering into contracts; and

(e) Doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Proposed amendment.

Delete the whole section 3(2) of the Act.

Implication.

- The implication of these amendment is to revoke the legal status of the Authority as a body corporate thereby reducing the Authority to a non-legal entity that cannot:-

-sue or be sued.

-own property.

-borrow money.

-enter into contracts.

-do or perform all other things or acts for the proper performance of its functions.

-The import of this amendment is to strip NTSA of its legal character. This has serious legal implications in relation to:-

-all ongoing legal cases.

-all ongoing contracts valued at approximately valued at over 2 billion.

-staff complement of over 700 employees.

-ownership of property including inspection centers, vehicles and other assets including TIMS system.

- This amendment shall further have the effect of creating a lacuna or vacuum on the management of the road transport subsector and performance of the functions of the Authority.

Amendment 3.

Section proposed to be amended:- Section 5

What the section currently provides

(i)The Headquarters of the Authority shall be in the capital city.

(ii)The Authority may establish such other offices anywhere in Kenya as it may consider necessary for the discharge of its functions.

Proposed amendment.

Delete the whole section 5 of the Act

Implication.

- The amendment not only creates ambiguity and confusion as to the headquarters and location of NTSA offices but also creates a vacuum as to the location of the headquarters of NTSA.

-The amendment also strips the power to create regional offices thereby depriving Kenyans of their constitutional right to access services.

- The amendment also limits the operations and functions of the Authority.

Amendment 4

Section proposed to be amended:- Section 15(i)

There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Board, on such terms and conditions as the Board shall determine.

Proposed Amendment.

Delete the word "Board" and substitute therefor the word "Cabinet Secretary".

To read:-

There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Cabinet Secretary , on such terms and conditions as the Cabinet Secretary shall determine.

Implication.

-The amendment is in conflict with the State Corporations Act which provides for the recruitment of the Director General by the Board and appointment by the Cabinet Secretary.

-It negates the role of the board in the recruitment process yet the Director General is answerable to the board.

Amendment 5.

Section proposed to be amended:- Section 15(3)

The Director-General shall be an *ex officio* member of the Board and shall have no right to vote at any meeting of the Board.

Proposed Amendment.

Delete the word "Board" and substitute therefor the word "Cabinet Secretary"

To read:-

The Director-General shall be an *ex officio* member of the Cabinet Secretary and shall have no right to vote at any meeting of the Cabinet Secretary.

Implication.

This is an absurd amendment as the Director General cannot be an ex-official member of the Cabinet Secretary and cannot vote at any meeting of the Cabinet Secretary.

4 NTSA OBSERVATIONS AND RECOMMENDATIONS

1. These proposed amendments did not originate from NTSA.
2. NTSA was never consulted or informed of the proposed amendments, the objects and the intention of the amendments despite the fact that the Authority by virtue of section 4 (1)(e) of the NTSA Act is charged with the legal responsibility of administering the Traffic Act.
3. It is noted that the proposed amendments are substantive in nature and it is our understanding that amendments as contained in Statute Miscellaneous Acts are limited to minor corrections or amendments.
4. Kenya is viewed in the Region (EAC, COMESA, and SADC) as having the best institutional framework for road transport management through NTSA. The proposed amendments will potentially lead to departure from international best practice and the UN Decade of Action.
5. The proposed amendments have far reaching consequences as illustrated and in particular the amendment of section 5(3) and if adopted would reverse the tremendous gains achieved by NTSA thus far.



6. The proposed amendments bring ambiguity as opposed to clarity on the legal status, role, functions and performance of the Authority.
7. The proposed amendments create glaring vacuums and lacunas as they lack transition clauses should the amendments be adopted. For example it is unclear who assumes legal responsibility for the ongoing legal cases, contracts, assets, liabilities and staff compliment of 703 Kenyans employed by NTSA.

Based on the above NTSA recommends the rejection of the proposed miscellaneous amendments to the NTSA Act 2012 in their entirety.

MINUTES OF THE THIRTY SEVENTH (37TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 19TH JUNE 2018 AT 9.30 A.M. IN 11TH FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. David Pkosing - Chairperson
2. Hon. Samuel Arama
3. Hon. Suleiman Dori Ramadhani
4. Hon. Ahmed Abdisalan Ibrahim
5. Hon. Kulow Maalim Hassan
6. Hon. Mugambi Murwithania Rindikiri
7. Hon. Peris Pesi Tobiko
8. Hon. Rehema Dida Jaldesa
9. Hon. Shadrack John Mose
10. Hon. Tom Mboya Odege
11. Hon. Vincent Kemosi Mogaka
12. Hon. Dominic Kipkoech Koskei
13. Hon. Rigathi Gachagua
14. Hon. David Njuguna Kiaraho
15. Hon. Johnson Many Naicca

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria - Vice Chairperson
2. Hon. Ahmed Bashane Gaal
3. Hon. Gideon Mutemi Mulyungi

MEMBERS ABSENT WITHOUT APOLOGY

1. Hon. Savula Ayub Angatia

FRIEND OF THE COMMITTEE

1. Hon. Chris Wamalwa - Member for Kimilili

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant II
2. Mr. Ahmed Salim A. - Clerk Assistant III
3. Ms. Mercy Wanyonyi - Legal Counsel II
4. Mr. James Muguna - Research Officer
5. Mr. Eugene Luteshi - Audio Officer
6. Ms. Zainab Wario - Sergeant at arm
7. Mr. Yezziel Jillo - Sergeant at arm
8. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

2. Mr. Nicholas Bodo - Ag. Director, Air Transport
3. Mr. Gilber Kibe - Director General. KCAA
4. Mr. Conrad Mochu - M.D. PR Agency
5. Mr. Martyn Lunani - Chief Investigator of Aircraft Accidents

MIN No. TPWH 150/2018: PRELIMINARIES

The Chairperson called the meeting to order at forty minutes past nine o'clock, with a prayer from Hon. Sam Arama, MP. The Chairperson informed the Committee that the agenda of the meeting was meeting with Kenya Civil Aviation Authority on the statement by Hon. Chris Wamalwa on the aircraft crash of 5th June 2018 and adoption of reports on the Statute Law (Miscellaneous Amendments) Bill, 2018, the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018, the Building Surveyors Bill, 2017 and three delegation reports for visits undertaken in Malaysia, Senegal and South Africa.

MIN No. TPWH 151/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The confirmation of the pending minutes of the previous sittings was deferred to Tuesday, 26th June 2018.

MIN No. TPWH 152/2018: **MEETING WITH THE KENYA CIVIL AVIATION
AUTHORITY (KCAA) ON THE AIRCRAFT CRASH
OF 5TH JUNE 2018**

Mr. Nicholas Bodo, who accompanied the Director General of KCAA, read to the Committee a statement signed by the Cabinet Secretary for Transport, explaining the sequence of events since the occurrence of the aircraft crash of the flight Reg. 5Y-CAC en route from Kitale to Nairobi, which was operated by Fly SAX company.

In the statement, the Cabinet Secretary informed the Committee that investigations were ongoing, and added that the Emergency Locator Transmitter (ELT) was found and was being examined. It was further reported that the aircraft last underwent an inspection and received a Certificate of Release into Service (CRS) on 14th May 2018 and was therefore airworthy. In addition, the aircraft was fitted with a Ground Proximity Warning System (GPWS) and Weather Radar. The Ministry undertook to update the Committee with more information as and when it becomes available.

Members, including the Hon. Chris Wamalwa, were not satisfied with the information from the Ministry. The Committee noted that the government owed the families of the victims and the country at large a detailed and open explanation on the air crash. While interacting with the Ministry representatives, it was noted that there were ten pending investigations into the causes of different air crashes in Kenya and therefore it was important that the matters be brought to a quick and conclusive closure. The Committee further noted with concern that although the flight was given clearance to fly at 13000 feet, the crew requested to fly at 11000 feet despite the fact that the path might not have been favorable to a lower cruise. The Committee also noted that although the flight was destined for Wilson to Kitale, there was an immediate change to Jomo Kenyatta International Airport reportedly for the pilot to drop three passengers who were late for their connecting flight. This information was however subject to verification from the Fly SAX Company. The Director General of KCAA informed the Committee that change of path is

normal as long as the pilot requested from the air traffic control for any reasons deem proper by the pilot.

The Committee was further informed that most of the information spread on both the print and the social media on the accident were untrue but that the relevant government and investigatory agencies cannot respond to such because the investigations were ongoing and therefore it needed extreme level of restraint considering the sensitivity of the matter.

The Ministry officials were asked to send more information and a preliminary report to the Committee by Thursday, 21st June 2018. Further, the KCAA was advised to send a request to aircraft operators to ensure they only use pressurized aircrafts in those routes with bad weather as part of precautionary and safety steps.

MIN No. TPWH 153/2018: **ADOPTION OF THE REPORT ON STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2018**

The Report on Statute Law (Miscellaneous Amendments) Bill, 2018 was adopted by the Committee, having been proposed for adoption by Hon. Peris Tobiko and seconded by Hon. Mugambi Rindikiri.

MIN No. TPWH 154/2018: **ADOPTION OF THE REPORT ON STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (NO. 2) BILL,
2018**

The Report on Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 was adopted by the Committee, having been proposed for adoption by Hon. Samuel Arama and seconded by Hon. Shadrack Mose.

MIN No. TPWH 155/2018: **ADOPTION OF THE REPORT ON THE BUILDING
SURVEYORS BILL, 2018**

The Report on the Building Surveyors Bill, 2018 was adopted by the Committee, having been proposed for adoption by Hon. David Kiharao and seconded by Hon. Rigathi Gachagua.

MIN No. TPWH 156/2018:

**ADOPTION OF THE DELEGATION REPORT ON
THE 9TH WORLD URBAN FORUM (WUF9) HELD IN
KUALA LUMPUR, MALAYSIA**

The Delegation Report on the 9TH World Urban Forum (WUF9) held in Kuala Lumpur, Malaysia on February 2018 was adopted by the Committee, having been proposed for adoption by Hon. Tom Odege and seconded by Hon. Dominic Koskei.

MIN No. TPWH 157/2018:

**ADOPTION OF THE DELEGATION REPORT ON
THE ICAO REGIONAL FACILITATION (FAL)
SEMINAR HELD IN DAKAR SENEGAL**

The Delegation Report on the ICAO Regional Facilitation (FAL) Seminar held in Dakar Senegal on March 2018 was adopted by the Committee, having been proposed for adoption by Hon. Rehema Jaldesa and seconded by Hon. Mugambi Rindikiri.

MIN No. TPWH 158/2018:


**ADOPTION OF THE DELEGATION REPORT ON
THE ICAO REGIONAL SEMINAR HELD IN
JOHANNESBURG, SOUTH AFRICA**

The Delegation Report on the ICAO Regional Seminar held in Johannesburg, South Africa on April 2018 was adopted by the Committee, having been proposed for adoption by Hon. Samuel Arama and seconded by Hon. Vincent Mogaka.

MIN No. TPWH 159/2018:

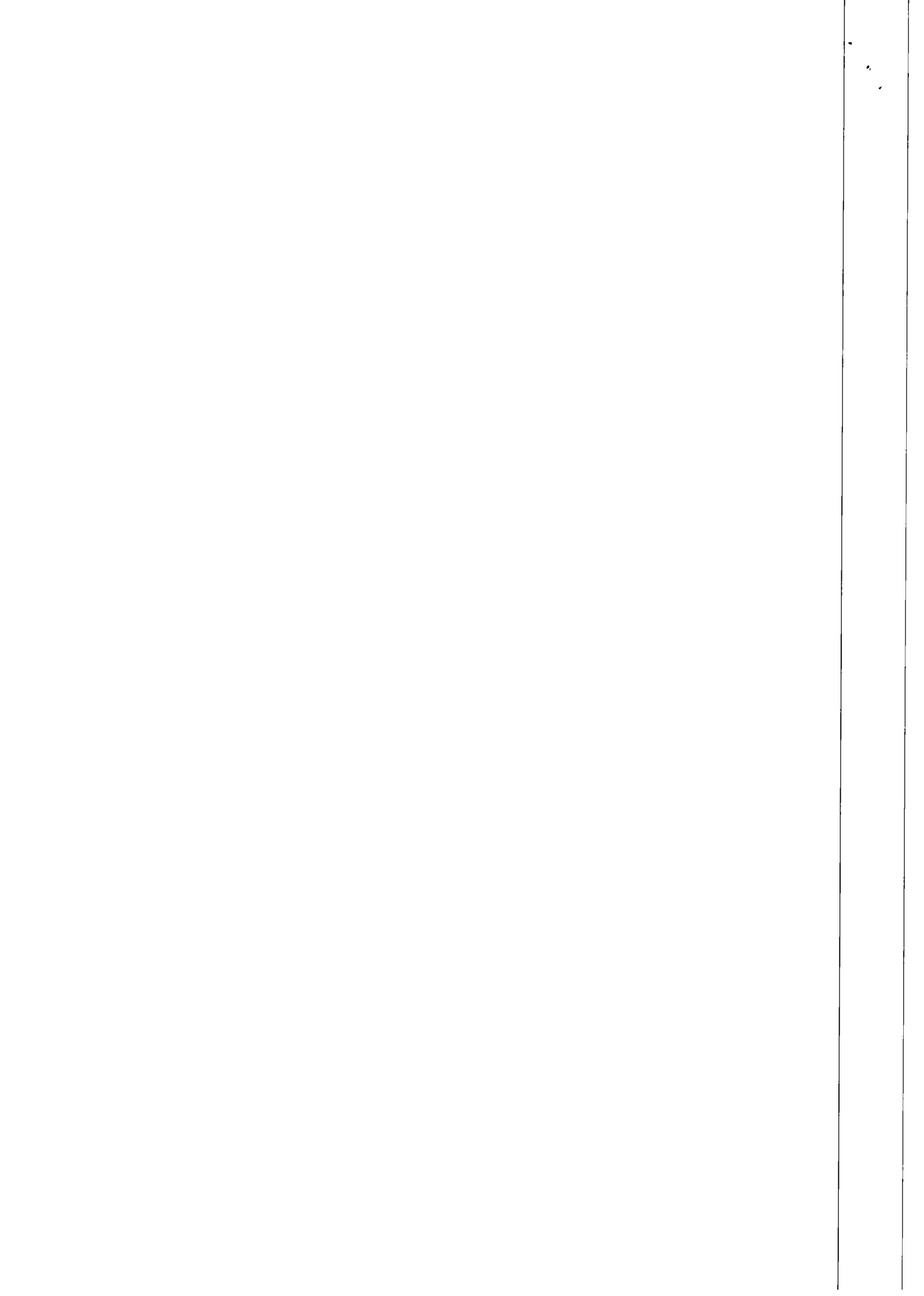
ADJOURNMENT

There being no other business, the sitting was adjourned at ten minutes past one o'clock. The next meeting to be held on Thursday, 21st June 2018.

Signed.....

(Chairperson)

Date.....
20/06/2018



MINUTES OF THE THIRTY SIXTH (36TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 14TH JUNE 2018 AT 9.30 A.M. IN 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Shadrack John Mose - Session Chairperson
2. Hon. David Njuguna Kiaraho
3. Hon. Ahmed Abdisalan Ibrahim
4. Hon. Dominic Kipkoech Koskei
5. Hon. Gideon Mutemi Mulyungi
6. Hon. Mugambi Murwithania Rindikiri
7. Hon. Peris Pesi Tobiko
8. Hon. Rehema Dida Jaldesa
9. Hon. Tom Mboya Odege
10. Hon. Vincent Kemosi Mogaka

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing - Chairperson
2. Hon. Moses Kuria - Vice Chairperson
3. Hon. Samuel Arama
4. Hon. Suleiman Dori Ramadhani
5. Hon. Ahmed Bashane Gaal
6. Hon. Johnson Many Naicca
7. Hon. Kulow Maalim Hassan

MEMBERS ABSENT WITHOUT APOLOGY

1. Hon. Rigathi Gachagua
2. Hon. Savula Ayub Angatia

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant II
2. Mr. Ahmed Salim A. - Clerk Assistant III
3. Ms. Mercy Wanyonyi - Legal Counsel II
4. Mr. James Muguna - Research Officer
5. Mr. Eugene Luteshi - Audio Officer
6. Mr. Yezziel Jillo - Sergeant at arm
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Mr. Charles Hinga - Principal Secretary, Housing
2. Prof. Arch. P. M. Maringa (Ph.D) - Principal Secretary, Transport
3. Mr. Francis Meja - Director General, NTSA
4. Mr. Andrew Saisi - Managing Director, NHC
5. Mr. Johnny Anderson - Managing Director, KAA
6. Lt. Gen. (Rtd) J.N. Waweru - Board Chairman, NTSA
7. Mr. Gitonga M'limbine - Board Member, NTSA
8. Brigut Oyway - Board Member, NTSA
9. Mr. John Muya - U.S., State Dept. of Transport
10. Mr. William Keitany - Ag. Corporate Secretary, NHC
11. Ms. Katherine N. Kisila - Corporation Secretary
12. Mr. Moses A. Nyakiongora, OGW - National Buildings Inspectorate, Nrb
13. Mr. Nicholas M. Musuni - Registrar/CEO, Engineers Board
14. Ms. Catherine Kinya Mungania - Legal & Corporate Affairs Manager
15. Ms. Grace Kamau - Senior Principal State Counsel, Transport
16. Mr. Charles O. Konyango - Director, Urban Development – U.D.D.
17. Mr. Kenneth O. Nyaseda - Senior Physical Planning Officer
18. Mr. Simon Opondo - Dep. Director, State Dept. of Housing
19. Mr. Maurice Akech - Ag. Executive Director, NCA
20. Ms. Angelah Rugut - Principal Air Transport Officer, Transport
21. Mr. Robert Ngugi - Senior Dep. Director, Legal, NTSA

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| 22. Mr. Patrick Tilotei | - | P.A. to D.G., NTSA |
| 23. Eng. R. Karani Raymond | - | Manager, Reg. & Compliance, NCA |
| 24. Ms. Yvonne Getugi | - | Senior Legal Officer, NCA |
| 25. Ms. Victoria Mulwa | - | Senior Legal Officer, Kenya Railways |
| 26. Mr. Daniel Moss | - | Legal Assistant, Kenya Airports Authority |

MIN No. TPWH 147/2018: **PRELIMINARIES**

The Chairperson called the meeting to order at thirty five minutes past nine o'clock, with a prayer from Hon. Tom Odege, MP. The Chairperson informed the Committee that the agenda of the meeting was meeting with different stakeholders on to receive submissions on the Statute Law (Miscellaneous Amendments) Bill, 2018 and the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018.

MIN No. TPWH 148/2018: **SUBMISSIONS FROM STAKEHOLDERS ON THE
STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2018 AND THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) (NO. 2)
BILL, 2018**

The stakeholders present were welcomed into the meeting. Oral submissions on the Statute Law (Miscellaneous Amendments) Bill, 2018 were received from the Kenya Airports Authority (KAA), from the Engineers Board of Kenya (EBK), from the National Construction Authority (NCA), from the National Transport and Safety Authority (NTSA), from the National Housing Corporation, and from the Ministry through the State Department for Housing & Urban Development and through the State Department for Transport. In their various submissions, the stakeholders largely agreed with the amendments contained in the Bill except for a few proposals which the Committee undertook to consider in the final report. Further, the National Transport and Safety Authority (NTSA) and the Ministry rejected in totality amendments to the National Transport and Safety Authority Act, 2012 on the grounds that both the Ministry and the NTSA were not consulted on the proposals and if allowed to pass, the amendments will have far-reaching consequences on the smooth operations of the NTSA.

Oral submissions on the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 were received from the Ministry with regard to the Urban Areas and Cities Act, 2011 and the Ministry had no objections to the proposed amendments since the amendments were pursuant to paragraph 20 and 21 of Part 1 of the Fourth Schedule to the Constitution which provides that housing policy and general principles of land planning and co-ordination of planning by counties is a function of the national government. The Committee therefore noted that the proposed amendments seek to ensure that county governments comply with the National Urban Development Policy.

MIN No. TPWH 149/2018:

ADJOURNMENT

There being no other business, the sitting was adjourned at thirty minutes past one o'clock. The next meeting to be held on Tuesday, 19th June 2018.

Signed.....

(Chairperson)

Date.....20/06/2018

MINUTES OF THE THIRTY FIRST (31ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 17TH MAY 2018 AT 9.30 A.M. IN BOMA INN HOTEL, SOUTH C NAIROBI

PRESENT

Hon. David Pkosing - Chairperson
Hon. Samuel Arama
Hon. Johnson Many Naicca
Hon. David Njuguna Kiaraho
Hon. Ahmed Abdisalan Ibrahim
Hon. Dominic Kipkoech Koskei
Hon. Kulow Maalim Hassan
Hon. Mugambi Murwithania Rindikiri
Hon. Peris Pesi Tobiko
Hon. Shadrack John Mose
Hon. Vincent Kemosi Mogaka
Hon. Gideon Mutemi Mulyungi
Hon. Rigathi Gachagua

ABSENT WITH APOLOGY

Hon. Moses Kuria - Vice Chairperson
Hon. Ahmed Bashane Gaal
Hon. Rehema Dida Jaldesa
Hon. Suleiman Dori Ramadhani
Hon. Savula Ayub Angatia
Hon. Tom Mboya Odege

SECRETARIAT

Ms. Chelagat Tungo - Clerk Assistant II
Mr. Ahmed Salim Abdalla - Clerk Assistant III
Ms. Emma Essendi - Legal Counsel II
Mr. James Muguna - Research Officer
Mr. Abdinasir Moge - Fiscal Analyst
Ms. Zeinab Wario - Sergeant-at-arm
Mr. Eugene Luteshi - Audio Office

MIN No. TPWH128/2018: PRELIMINARIES

The Chairman called the meeting to order at 2:45 p.m. The meeting was then opened with a word of prayer. Members were informed that the agenda of the meeting was to receive a briefing from the Fiscal Analyst on the budget estimates for the financial year 2018/19 before interrogation of the main budget for Ministry of Transport, Infrastructure, Housing and Urban Development as well as its Departments and Agencies.

MIN No. TPWH129/2018: BRIEF ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2018

The Legal Counsel took Members through the Brief on the Statute Law (Miscellaneous Amendments) Bill, 2018, Clause by Clause. While the Committee deliberated on the Bill, it made the following general observations

- 1) As regards to the proposed amendments to the Housing Act, Cap 117, the Committee noted that the Cabinet Secretary should appoint a maximum of six members to the Corporation taking into account the regional and ethnic balance of the people of Kenya, gender, and representation of youths and persons with disabilities.
- 2) As regards to the proposed amendments to the Kenya Ports Authority Act (Cap 309) and the Kenya Airports Authority Act (Cap.395), the Committee was agreeable to the proposed amendments which seek to provide that arbitrators in disputes under the two statutes shall be appointed by the Registrar of the Nairobi Centre for Arbitration instead of the Chief Justice since it would encourage the independence of the courts in matters arbitration.
- 3) As regards the proposed amendments to the Traffic Act, Cap 403, the Committee noted that-
 - (a) The proposed amendments seek to align the Traffic Act, Cap 403 to the National Transport and Safety Authority Act, No.33 of 2012 since the amendments seek to, among other things define and provide for the appointment of inspectors of motor vehicles and designate authorized officers by the National Transport and Safety Authority; and
 - (b) The proposed amendments seek to recognize the East African Community Load Control Act, 2013 as regards the removal of vehicles from the road and also create an offence with respect to driving of commercial vehicles while being intoxicated and prescribe a penalty for the same or in accordance with the the East African Community Load Control Act, 2013;
- 4) As regards to the proposed amendments to the Kenya Roads Board Act, the Committee noted that the Kenya Roads Bill, 2017 which was at the Senate had similar amendments on the qualifications of the Executive Director of the Board and had been passed by the House.

- 5) As regards to the proposed amendments to the National Construction Authority Act, the Committee noted that the amendments were minor amendments seeking to correct cross-referencing mistakes.
- 6) As regards to the proposed amendments to the Engineers Act, the Committee noted that the amendments only seek to provide for the extension of the renewal of registration of foreign engineers where works have not been completed.
- 7) With respect to the proposed amendments to the National Transport and Construction Authority Act, No33 of 2012, the Committee observed that the proposed amendments were substantive in nature seeking to remove the corporate powers of the Authority and to also have its offices and establish offices elsewhere.
- 8) With regards to the proposed amendments to the Urban Areas and Cities Act, the Committee observed that the proposals are pursuant to Paragraph 20 and 21 of Part 1 of the Fourth Schedule to the Constitution which provides that housing policy and general principles of land planning and co-ordination of planning by counties is a function of the national government. The Committee further noted that the proposed amendments seek to ensure that county governments comply with the National Urban Development Policy.
- 9) The proposed amendments by Mr. Kenneth Samoei to the Engineers Act were in contravention of Standing Order 133 (5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject matter or proposes to unreasonably or unduly expand the subject of the Bill or is inappropriate or is not in logical sequence to the subject matter of the Bill.

Having considered the Bill, the Committee made the following recommendations that:-

- 1) Section 3(2) of the Housing Act, be further amended in paragraph (d) by-
 - (a) deleting the words “not less than five nor more than seven” and substituting therefor the words “six”; and
 - (b) by inserting the following new paragraph immediately after paragraph (d) –

“(h) in appointing the persons under paragraph (d),the Cabinet Secretary shall ensure that –

 - (i) It reflects the regional and ethnic diversity of the people of Kenya;
 - (ii) Not more than two thirds of the members are of the same gender; and
 - (iii) Youths and persons with disability are represented.
- 2) The Traffic Act, Cap 403 be further amended in section 2 by deleting the definition of the term “driving test examiner”;
- 3) The proposed amendment to section 57 of the Traffic Act, Cap 403 be deleted;
- 4) The proposed amendment to Section 58 of the Traffic Act, Cap 403 be further amended by inserting the words “or in accordance with the East African Commercial Vehicle Load Control Act,2013” before the words “shall be guilty”;
- 5) The proposed amendment to section 70 (5B) of the Traffic Act, Cap 403 be deleted;

- 6) The proposed amendment to Section 106 (8) of the Traffic Act, Cap 403 be further amended by deleting the words “under” appearing immediately before the word “thereunder”;
- 7) The proposed amendment to section 2 of the National Transport and Safety Authority Act , No.33 of 2012 be deleted; The Committee rejected the proposed amendment.
- 8) The proposed amendment to section 3(2) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted; The Committee rejected the proposed amendment.
- 9) The proposed amendment to section 5 of the National Transport and Safety Authority Act , No.33 of 2012 be deleted; The Committee rejected the proposed amendment.
- 10) The proposed amendment to section 15(1) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted; The Committee rejected the proposed amendment.
- 11) The proposed amendment to section 15(3) of the National Transport and Safety Authority Act, No.33 of 2012 be deleted; The Committee rejected the proposed amendment.

MIN No. TPWH130/2018:

ANY OTHER BUSINESS

The Committee tasked the secretariat to prepare a draft report on the Statute Law (Miscellaneous Amendments) Bill, 2018 to be adopted by Members before tabling in the House.

MIN No. TPWH131/2018: ADJOURNMENT

There being no other business to transact, the sitting adjourned at thirty minutes past one o’clock. The next meeting was scheduled for same day at 2.30 p.m. where the Committee will meet the accounting officer from State Department of Housing, Urban Development and Public Works.

Signed.....

(Chairperson)

Date.....19/6/2018